

No. 2440

United States
Circuit Court of Appeals

For the Ninth Circuit.

EDWIN RICHARDS,

Plaintiff in Error,

vs.

AMERICAN BANK OF ALASKA, a Corporation,

Defendant in Error.

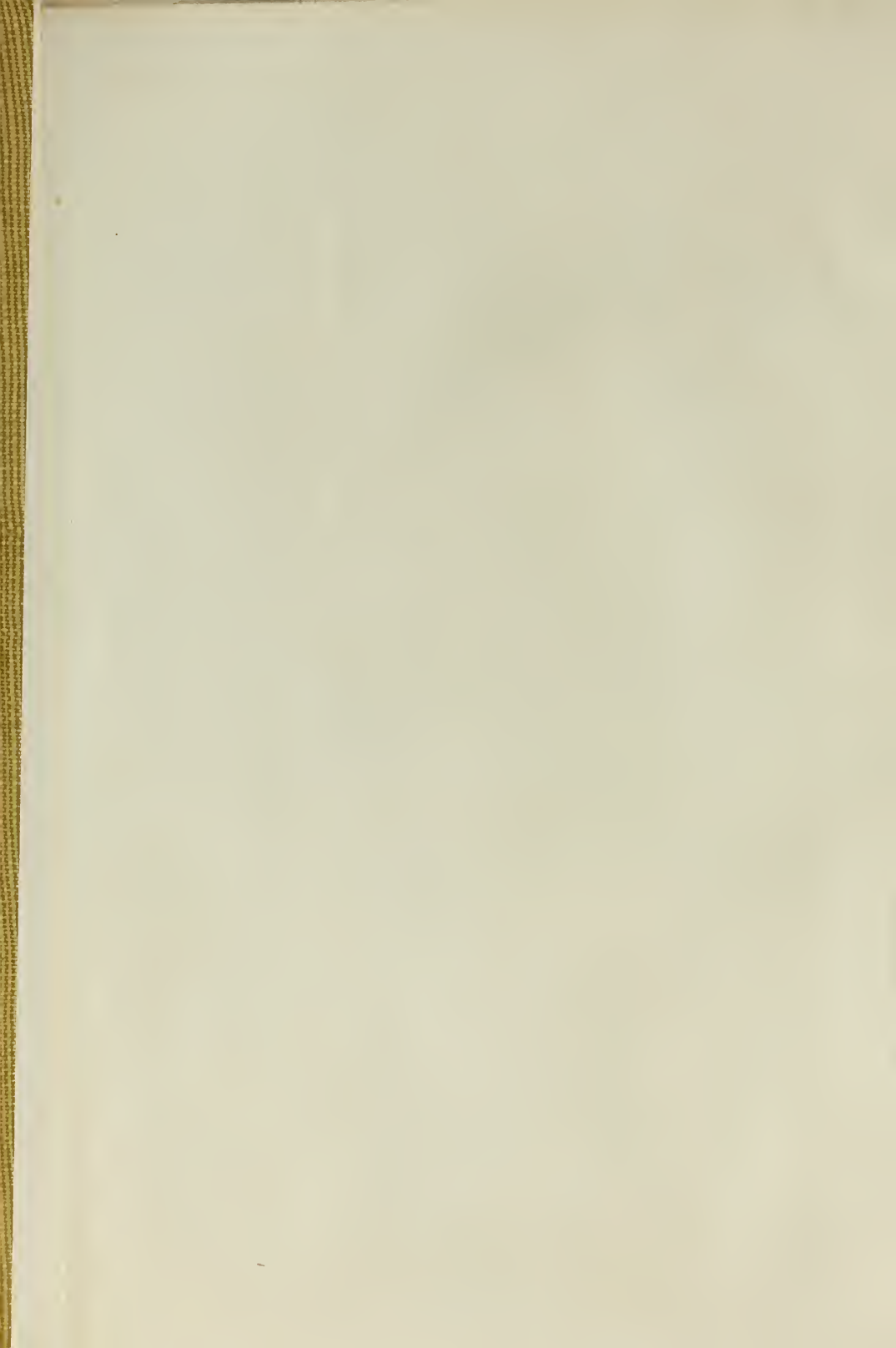
Transcript of Record.

Upon Writ of Error to the United States District Court
of the Territory of Alaska,
Fourth Division.

Filed

AUG 19 1914

F. D. MURKIN,
Clerk.



(Testimony of Edward Williams.)

quarter interest? [32]

A. I had the bill of sale made up both in the *same*.

Q. In whose name was the bill of sale made?

A. Richards and Williams.

Q. After you saw Mr. Hurley, what, if anything, did you do with the money that you had in the Miners & Merchants' Bank?

A. I got my money out of there, and took it down to Mr. Hurley.

Q. State the conversation, if any you had with Mr. Hurley at the time you went to borrow the money first—that first conversation.

A. I told Mr. Hurley that I had no power of attorney.

Q. No power of attorney from whom? Tell us what you told Mr. Hurley.

A. I told Mr. Hurley that I had no power of attorney from Mr. Richards, and any agreement between Mr. Richards and I was verbal.

Q. What did you tell him the agreement was between you and Mr. Richards?

A. That he was my partner.

Mr. PRATT.—We object and move that that be stricken.

The COURT.—It may stand for the present. I understand that such a statement is not evidence of a partnership unless there is evidence of a partnership in support of it.

Mr. CLARK.—We will connect it up.

Mr. PRATT.—There is nothing to show a mining copartnership.

(Testimony of Edward Williams.)

The COURT.—There is other evidence from which that inference might be drawn.

Mr. MARQUAM.—We have the privilege of renewing the motion to strike if the evidence is not sufficient to connect it up.

The COURT.—Yes. [33]

Mr. CLARK.—Q. Did you ask Mr. Hurley at that time whether or not he was acquainted with Mr. Richards? A. Yes. I think I did.

Q. In addition to your telling Mr. Hurley that Mr. Richards was your partner, what did you tell Mr. Hurley about the loan that you desired?

A. Well, I told him what I figured on doing with the money, if that is what you mean.

Q. Yes. That is what I want.

A. What I intended to do with the money; Mr. Boulton had a mortgage on the ground and he had done business with Mr. Hurley, and I was to assume the mortgage—

Q. How much was the mortgage for?

A. \$1,500.00.

Q. How much money did you ask to borrow at that time? A. \$3,500.00.

Q. Now, when you went to borrow—(interrupted).

Q. What, if anything, was said between you and Mr. Hurley in regard to how the money should be deposited?

A. Mr. Hurley suggested that I should sign it in Richards & Williams name, because if anything happened to me no one could get the money without a good deal of trouble.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Assignment of Errors.....	273
Attorneys of Record, Names and Addresses of..	1
Bill of Exceptions.....	21
Bond on Writ of Error.....	290
Certificate of Clerk U. S. District Court to Transcript of Record.....	296
Certificate to Bill of Exceptions.....	271
Citation on Writ of Error.....	294
Complaint	3

DEPOSITIONS:

EGLER, JOSEPH H.....	147
Cross-examination	151
Redirect Examination	156
Recross-examination	157
Exceptions of Edwin Richards to Instructions of Court to Jury.....	256
Exceptions to the Refusal to Give and Modifica- tion of Special Instructions Tendered by the Defendant Edwin Richards.....	268

EXHIBITS:

Plaintiff's Exhibit "A"—Telegram, Dated September 12, 1910, John Boulton to Dick Richards	23
---	----

Index.	Page
EXHIBITS—Continued:	
Plaintiff's Exhibit "B"—Promissory Note, Dated October 6, 1910, Richards & Williams to American Bank of Alaska.	34
Plaintiff's Exhibit "C"—Check, Dated De- cember 5, 1910, Richards & Williams to John Lund.....	36
Plaintiff's Exhibit "D"—Letter, Dated Oc- tober 24, 1910, Ed. J. Williams to Edwin Richards	38
Plaintiff's Exhibit "E"—Letter, Dated De- cember 8, 1910.....	44
Plaintiff's Exhibit "F"—Letter, Dated September 21, 1910	48
Plaintiff's Exhibit "G"—Letter, Dated De- cember 26, 1910	51
Plaintiff's Exhibit "H"—Promissory Note, Dated February 24, 1911, Edward Will- iams et al. to American Bank of Alaska.	56
Plaintiff's Exhibit "I"—Telegram, Dated September 12, 1911, Edwin Richards to Edward J. Williams.....	58
Defendant's Exhibit 1—Certified Copy of Mortgage, Dated February 24, 1911, Edward Williams et al. to American Bank of Alaska	105
Defendant's Exhibit 2—Letter Dated April 4, 1911, Ed. Williams to "Dick".....	124
Defendant's Exhibit 3—Letter, Dated June 27, 1911, Ed. J. Williams to "Dick"..	126

Index.	Page
EXHIBITS—Continued:	
Defendant's Exhibit 5—Letter, Dated January 20, 1912, Ed. J. Williams to "Dick"	131
Defendant's Exhibit 6—Letter, Dated January 2, 1912, Edwin Richards to American Bank of Alaska.....	208
Hearing on Motion for New Trial.....	16
Instructions of Court to Jury.....	247
Judgment	17
Minutes of Court—March 24, 1914.....	10
Minutes of Court—March 25, 1914.....	11
Minutes of Court—March 25, 1914.....	13
Minutes of Court—March 26, 1914.....	14
Minutes of Court—March 27, 1914.....	20
Minutes of Court—April 14, 1914.....	16
Minutes of Court—April 18, 1914.....	16
Minutes of Court—May 23, 1914.....	21
Minutes of Court—May 27, 1914.....	273
Motion for New Trial.....	270
Names and Addresses of Attorneys of Record..	1
Order Enlarging Return Day of Writ of Error.	295
Order Allowing Motion for New Trial.....	16
Order Allowing Writ of Error and Fixing Amount of Bond	289
Order Denying Motion for New Trial.....	16
Order Extending Date for Filing and Settling Bill of Exceptions.....	21
Order Extending Time to File, etc., Bill of Exceptions	20
Order Fixing Amount of Bond on Appeal.....	20
Order Settling and Allowing Bill of Exceptions.	273

Index.	Page
Petition for Writ of Error.....	288
Praecipe for Transcript of Record.....	1
Separate Answer of the Defendant Edwin Richards	8
Special Instructions Requested by Defendant Richards	263
Stipulations as to Printing Record.....	2
TESTIMONY ON BEHALF OF PLAINTIFF:	
HEILIG, A. R.....	242
Cross-examination	243
HURLEY, C. J.....	157
Cross-examination	170
Recalled—Cross-examination	243
In Rebuttal	245
WILLIAMS, EDWARD	22
Cross-examination	60
Redirect Examination	135
Recross-examination	141
TESTIMONY ON BEHALF OF DEFENDANT:	
RICHARDS, EDWIN	190
Cross-examination	215
Redirect Examination	238
Recross-examination	241
Trial by Jury (March 24, 1914).....	10
Trial by Jury Continued (March 25, 1914).....	11
Trial by Jury Continued (March 25, 1914—7:30 P. M.)	13
Trial by Jury Continued (March 26, 1914)....	14
Verdict	15
Writ of Error.....	292

Names and Addresses of Attorneys of Record.

McGOWAN & CLARK, Attorneys for Plaintiff in
Error and Appellee,
Fairbanks, Alaska.

LOUIS K. PRATT, THOS. A. MARQUAM, Attor-
neys for Defendants in Error and Appellants,
Fairbanks, Alaska. [1*]

*In the District Court for the Territory of Alaska,
Fourth Judicial Division.*

No. 1815.

AMERICAN BANK OF ALASKA, a Corporation,
Plaintiff,

vs.

EDWARD WILLIAMS and EDWIN RICH-
ARDS, Mining Copartners Engaged in Busi-
ness Under the Firm Name and Style of
RICHARDS & WILLIAMS, and RICH-
ARDS & WILLIAMS, a Mining Copartner-
ship,

Defendants.

Praeipice for Transcript of Record.

The Clerk of the Court will please prepare and
certify a copy of the record in the action as follows:

1st: The Complaint, and Answer of defendant
Edwin Richards.

2nd: The Bill of Exceptions complete.

3rd: All journal entries connected with the Third
Trial, including the final Judgment.

*Page-number appearing at foot of page of original certified Record.

4th: All papers connected with the Writ of Error, except the Writ of Error, the Citation, the order extending time in which to file transcript in the Appellate Court, and the stipulations to printing record; the last four papers, being entitled in said Appellate Court, are to be forwarded to and filed there.

LOUIS K. PRATT & SON and
THOMAS A. MARQUAM,

Attorneys for Defendant Richards.

Service and receipt of copy admitted this 11th day of May, 1914.

McGOWAN & CLARK.

[Endorsed]: No. 1815. District Court, 4 Div., Territory of Alaska. American Bank of Alaska, a Corporation, vs. Edward Williams and Edwin Richards, Mining Copartners, etc. Praeceptum for Transcript of Record. Filed in the District Court, Territory of Alaska, 4th Div. May 12, 1914. Angus McBride, Clerk. [2]

[Caption and Title.]

Stipulation as to Printing Record.

It is stipulated between the attorneys for the parties respectively that in printing the record in this case for use in the said court, all captions should be omitted after the title of the cause has once been printed, and the words "Caption and Title" and the name of the paper or document should be substituted therefor; also that after printing the indorsements and file-marks on the complaint and answer, bill of

exceptions, record in the Appellate Court, and on the exhibits introduced in evidence and offered, the indorsements other than file-marks on all other papers should be omitted, and the word "Indorsements" printed in lieu thereof. All other parts of the record should be printed.

Dated May 11th, 1914.

LOUIS K. PRATT & SON and
THOMAS A. MARQUAM,
Attorneys for Plaintiff in Error.

McGOWAN & CLARK,
Attorneys for Defendant in Error. [21½]

[Endorsed]: No. —. In the U. S. Circuit Court of Appeals for the Ninth Circuit. Edwin Richards, Pltff. in Error, Against American Bank of Alaska, a Corporation, Deft. in Error. Stipulation as to Printing Record. Filed in the District Court, Territory of Alaska, 4th Div. May 12, 1914. Angus McBride, Clerk.

[Caption and Title.]

Complaint.

Comes now the plaintiff above named and complains of the defendant above named and for cause of action alleges as follows, to wit:

1.

That plaintiff above named is a corporation, duly and regularly organized and existing under and by virtue of the laws of the State of Washington, and having a place of business and a duly authorized resident agent within the Fourth Judicial Division

of the Territory of Alaska.

2.

That at all the times hereinafter mentioned Edward Williams and Edwin Richards were a mining copartnership, engaged in business in the Iditarod district of the Territory of Alaska, under the firm name and style of Richards & Williams.

3.

That on or about the month of September, A. D. one thousand nine hundred ten, plaintiff above named, at the special instance and request of defendants above named, loaned to defendants a sum in excess of thirty-five hundred dollars [3] (\$3500.00), which said sum defendants promised and agreed to repay to plaintiff, and thereafter and on or about the twenty-fourth day of February, A. D. one thousand nine hundred eleven, said defendants, in consideration of the moneys theretofore loaned to them by plaintiff herein, made, executed, and delivered to plaintiff herein their certain promissory note, in the words and figures following, to wit:

Iditarod, Alaska, Feb. 24, 1911.

\$3500.00.

On or before July 1, 1911, after date, I promise to pay to the order of American Bank of Alaska, at its office in Iditarod, Alaska, Thirty-five hundred 00-100 Dollars, for value received, with interest after Date at the rate of Twelve per cent. per annum until paid. Principal and interest payable only in U. S. Gold Coin of the present standard of weight and fineness. For value received, each and every party signing or endorsing this note hereby waives pre-

sentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises, in case suit is instituted to collect the same or any portion thereof, to pay such additional sums as the court may adjudge reasonable as attorney's fees in such suit.

(Sgd.) RICHARDS & WILLIAMS.

By EDWARD WILLIAMS,

(Sgd.) EDWARD WILLIAMS.

(Sgd.) EDWIN RICHARDS.

By EDWARD WILLIAMS,

His Attorney in Fact.

4.

That said note is past due and no part thereof has been paid, and the whole thereof, both principal and interest, is now due, owing, and unpaid from defendants to plaintiff herein.

5.

That plaintiff has been compelled to, and has, employed attorneys to institute and prosecute this action for said sum, and has become liable to said attorneys for reasonable attorneys' fees, and plaintiff is informed and believes and so alleges that the sum of seven hundred fifty dollars (\$750.00) would be a reasonable sum to be allowed to its attorneys for their services in said action.

For a second and further separate cause of action against [4] defendant and in favor of plaintiff, plaintiff alleges as follows, to wit:

1.

That plaintiff above named is a corporation, duly and regularly organized and existing under and by

virtue of the laws of the State of Washington, and having a place of business and a duly authorized resident agent within the Fourth Judicial Division of the Territory of Alaska.

2.

That at all the times hereinafter mentioned, Edward Williams and Edwin Richards were a mining copartnership, engaged in business in the Iditarod district of the Territory of Alaska, under the firm name and style of Richards & Williams.

3.

That on and prior to the sixteenth day of September, A. D. one thousand nine hundred eleven, and within one year prior thereto, plaintiff above named, at the special instance and request of defendants herein, permitted said defendants to overdraw their account at the bank conducted by plaintiff in Iditarod, Alaska, in the sum of three hundred twenty-seven and 96/100 dollars (\$327.96), which said sum defendants promised and agreed to repay to plaintiff on demand.

4.

That plaintiff has demanded the payment of said sum, but to pay the same defendants have failed and neglected and do now fail and neglect.

5.

That there is now due, owing, and unpaid from defendants to plaintiff the said sum of three hundred twenty-seven and 96/100 dollars (\$327.96), together with interest thereon at the [5] rate of eight per centum per annum from the sixteenth day of September, A. D. one thousand nine hundred eleven, to date.

WHEREFORE: Plaintiff prays judgment against defendants above named, and each of them, and against the copartnership of Richards & Williams, as follows, to wit:

1.

On its first cause of action, for the sum of thirty-five hundred dollars (\$3500.00), together with interest thereon at the rate of twelve per centum per annum from the twenty-eighth day of February, A. D. one thousand nine hundred eleven, to date, together with an attorneys' fee in the sum of seven hundred fifty dollars (\$750.00).

2.

On its second cause of action, for the sum of three hundred twenty-seven and 96/100 dollars (\$327.96), together with interest thereon at the rate of eight per centum per annum from the sixteenth day of September, A. D. one thousand nine hundred eleven, to date.

3.

For costs of suit and for such other and further relief as to the Court shall appear meet, just, and equitable in the premises.

McGOWAN & CLARK,
Attorneys for Plaintiff.

Territory of Alaska,
Fairbanks Precinct,—ss.

C. J. Hurley, being first duly sworn according to law, on his oath deposes and says: I am the President of American Bank of Alaska, the plaintiff in the above-entitled action, and make this affidavit for and in behalf of said American Bank of [6]

Alaska, which is a corporation; I have read the within and foregoing complaint, know the contents thereof, and the same is true as I verily believe.

C. J. HURLEY.

Subscribed and sworn to before me on this fourteenth day of August, A. D. one thousand nine hundred twelve.

[Seal] RICHARD H. GEOGHEHAN,
Notary Public in and for the Territory of Alaska.

[Endorsed]: No. 1815. In the United States District Court, Territory of Alaska, Fourth Division. American Bank of Alaska, a Corporation, Plaintiff, vs. Edward Williams et al., Defendants. Complaint. Filed in the District Court, Territory of Alaska, 4th Div. Aug. 14, 1912. C. C. Page, Clerk. By H. C. Green, Deputy. [7]

[Caption and Title.]

Separate Answer of the Defendant Edwin Richards.

Comes now the defendant Edwin Richards, by Louis K. Pratt & Son, his attorneys, and for his separate answer to that part of the plaintiffs' complaint herein purporting to be a first cause of action, alleges:

1.

That he admits the organization and corporate capacity of the plaintiff as stated in paragraph 1 in said supposed first cause of action found on page one thereof, but denies each and every allegation, statement, matter and thing contained in paragraphs 2, 3 and 4 on pages one and two of the said complaint,

and as to the statements and allegations of paragraph 5 thereof on page 2, this answering defendant denies that he has knowledge or information concerning the same sufficient to form a belief.

THE DEFENDANT EDWIN RICHARDS FOR HIS SEPARATE ANSWER TO THAT PART OF THE PLAINTIFF'S COMPLAINT DESIGNATED "A SECOND AND FURTHER SEPARATE CAUSE OF ACTION," ETC., COMMENCING ON PAGE 2 AND CONTINUING TO THE TOP OF PAGE 4 THEREOF, says:

That he admits the corporate organization and capacity of the plaintiff to transact business in the Territory of Alaska, as stated by it in paragraph 1 on page 3 of the said complaint, but denies each and every allegation, statement, matter and thing [3] contained in paragraphs 2, 3, 4 and 5 of the said "second and further separate cause of action," etc., found on page 3 and at the top of page 4 of the said complaint.

WHEREFORE this answering defendant prays judgment that he may go hence without day; that the plaintiff have nothing as against him by his said complaint, and that this answering defendant be allowed his costs and disbursements herein expended.

LOUIS K. PRATT & SON,

Attorneys for Defendant Richards.

United States of America,
Territory of Alaska,—ss.

Edwin Richards, being first duly sworn, on oath says: That he is one of the defendants in the above-entitled action; that he has read the foregoing an-

swer; knows the contents thereof, and that the same is true, as he verily believes.

EDWIN RICHARDS.

Subscribed and sworn to before me this 9th day of April, 1913.

[Seal]

LOUIS K. PRATT,

Notary Public in and for Alaska.

Due and legal service of the foregoing answer, by receipt of copy thereof, is hereby admitted, this 9th day of April, 1913.

McGOWAN & CLARK,

Attorneys for Plaintiff.

[Endorsed]: No. 1815. District Court, Territory of Alaska, 4th Division. American Bank of Alaska, a Corporation, Plaintiff, vs. Edward Williams and Edwin Richards, Mining Copartners Engaged in Business Under the Firm Name and Style of Richards & Williams, and Richards & Williams, a Mining Copartnership, Defendants. Separate Answer of the Defendant Edwin Richards. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 10, 1913. C. C. Page, Clerk. By P. R. Wagner, Deputy. [9]

[Minutes of Court—March 24, 1914.]

[Caption and Title.]

Trial by Jury.

Now on this day this cause came on regularly for trial, McGowan and Clark appearing for and in behalf of plaintiffs, and Louis K. Pratt appearing in behalf of defendants, and both sides announcing

themselves ready for trial, the following proceedings were had, to wit:

Upon motion of Louis K. Pratt, attorney for defendant, the Court ordered that T. A. Marquam be entered as associate counsel for defendant herein.

Whereupon the clerk proceeded to draw from the trial jury box, one at a time, the ballots containing the names of the members of the regular panel of petit jurors, and the respective attorneys examined said jurors and exercised their challenges against said jurors so drawn, until the ballots were exhausted and the jury was incomplete, said jurors so drawn to try the issues in this cause being as follows, to wit:

Rudolf Alm, F. C. Adams, Wm. Butler, W. W. Elliott, D. G. Ferguson, J. F. Burnett, Frank B. Hall, A. Bjerremark, J. S. Whitman, C. N. Nelson and L. B. Clough.

Whereupon the Court directed the Clerk to issue a writ of special venire, directed to the United States Marshal, commanding him to summon from the body of the District, seven (7) men qualified to sit and serve as jurors in this Court and cause, said venire [10] returnable to-morrow, March 25, 1914, at 10:00 A. M.

The Court admonished the jury and further proceedings continued until to-morrow, March 25, 1914, at 10:00 A. M. [11]

[Minutes of Court—March 25, 1914.]

[Caption and Title.]

Trial by Jury Continued.

Now on this day this cause came on regularly for

continuance of trial, the jurors heretofore drawn to try the issues of this cause being all present, the respective parties and attorneys being present as heretofore, and the following proceedings were had, to wit:

The marshal returned into court the special venire and the members thereof answering to their names as present, the clerk proceeded to draw from the trial jury box, one at a time, the names of the members of said special venire, the respective attorneys exercising their challenges and examining the jurors so drawn until the panel was complete, consisting of the following persons, to wit;

Rudolph Alm,	Frank B. Hall,
C. N. Nelson,	A. Bjerremark,
Andrew Nerland,	J. S. Whitman,
W. W. Elliott,	L. B. Clough,
D. G. Ferguson,	W. E. Kenyon,
J. F. Burnett,	B. F. Pryor,

which said jury was duly sworn to try the issues in said cause.

Opening statement was had by John A. Clark in behalf of plaintiffs.

Upon motion of John A. Clark, the Court ordered that the case be dismissed as to plaintiff's second cause of action.

Statement was had by Louis K. Pratt, attorney for defendant.

Whereupon Edward Williams was duly sworn and testified as a witness in behalf of plaintiff. [12]

Plaintiffs' Exhibit "A," "B," "C," "D," "E," "F" and "G" were marked, offered and admitted in evidence.

The Court admonished the jury and further proceedings were continued until 1:30 P. M., this day.

Thereafter, at 1:30 P. M., the jurors, the respective parties and attorneys being present as heretofore, the trial of said cause was resumed.

Edward Williams resumed the stand and testified further in behalf of plaintiff.

Plaintiff's Exhibits "H," "I" were marked, offered and admitted in evidence.

Defendants' Exhibits "1" and "2" were marked, offered and admitted in evidence.

And it appearing that the jury should be kept together and free from communication, John Solen and L. F. Protzman were duly sworn as bailiffs in charge of said jury during the pendency of the trial of said cause.

The Court admonished the jury and further proceedings were continued until 7:30 P. M., this day.
[13]

[Minutes of Court—March 25, 1914.]

[Caption and Title.]

Trial by Jury Continued.

7:30 P. M.

Now at this time this cause came on regularly for continuance of trial, the jury, the respective parties and attorneys being present as heretofore, the following proceedings were had, to wit:

The deposition of Joseph Eglar was read into evidence by John A. Clark, attorney for plaintiff, the cross-examination thereof was read into evidence by Louis K. Pratt, attorney for defendants.

C. J. Hurley was duly sworn and testified in behalf of plaintiffs.

Plaintiff was granted permission by the Court to put an attorney on the stand later for the purpose of testifying as to reasonable attorney's fees.

Plaintiff rested.

Whereupon Louis K. Pratt, attorney for defendants, moves for nonsuit of said cause, which motion was by the Court denied.

Edwin Richards was thereupon duly sworn and testified as a witness in behalf of defendant.

Court admonished the jury and further proceedings continued until to-morrow at 10:00 A. M. [14]

[Minutes of Court—March 26, 1914.]

[Caption and Title.]

Trial by Jury Continued.

Now on this day this cause came on regularly for continuance of trial, the jurors, in charge of their sworn bailiffs, the respective parties and attorneys being present as heretofore, and the following proceedings were had, to wit:

Edwin Richards resumed the stand and testified further in behalf of defendants.

Defendant rested.

By permission of the Court and stipulation of the respective attorneys, A. R. Heilig was duly sworn and testified in behalf of plaintiff.

C. J. Hurley was recalled to the stand and testified further in behalf of plaintiff.

Plaintiff rested. Defendant rested.

The Court admonished the jury and further pro-

ceedings continued until 1:00 P. M., this day.

Thereafter, at 1:00 P. M., the jurors, in charge of the sworn bailiffs, the respective parties and attorneys being present as heretofore, the trial of said cause was resumed.

After opening arguments by John A. Clark in behalf of plaintiff, and T. A. Marquam in behalf of defendants, and closing arguments by Louis K. Pratt, in behalf of defendants, and Thos. A. McGowan in behalf of plaintiffs, the Court instructed the jury as to the law in the premises, and John Solen and L. F. Protzman were again sworn as bailiffs in charge of said jury, whereupon said jury retired in charge of said bailiffs to deliberate upon their verdict. [15]

5:30 P. M.

And now come into court the jury heretofore sworn to try the issues in this cause in charge of their sworn bailiffs, and being called, all answered to their names as present; also present Thos. A. McGowan and Louis K. Pratt, attorneys for plaintiff and defendants respectively; and the jury, by and through their foreman present, in open court, their verdict in said cause, which is in the words and figures following, to wit:

[Verdict.]

[Caption and Title.]

We, the jury duly impaneled and sworn to hear, try and determine the issues in the above-entitled action, do find in favor of the plaintiff and against the defendants Edwin Richards and Edward Williams, copartners as Richard & Williams and the defendant Edwin Richards, and do find that there is

now due and owing and unpaid from said defendants to plaintiff the sum of \$3,500.00 principal, due on the note sued on in the above-entitled action, together with no interest thereon, together with an attorney's fee for plaintiff's attorneys in the sum of \$750.00.

Dated March 26th, 1914.

L. B. CLOUGH,
Foreman.

—which said verdict was received by the Court and ordered filed with the clerk of this court, and the jury was discharged from further deliberation in this cause. [16]

[Minutes of Court—April 14, 1914.]

[Caption and Title.]

Hearing on Motion for New Trial.

Now on this day came on for hearing defendant's motion for a new trial herein, John A. Clark, of McGowan & Clark, appearing for and in behalf of plaintiff, Louis K. Pratt and T. A. Marquam appearing for and in behalf of defendants. After argument thereon by the respective attorneys, the same was submitted to the Court and decision thereon was reserved until a later date. [17]

[Minutes of Court—April 18, 1914.]

[Caption and Title.]

Order Denying Motion for New Trial.

Now on this day defendants' motion for new trial herein having been previously heard and submitted to the Court for its decision, John A. Clark, of Mc-

Gowan & Clark, in behalf of plaintiff, and Louis K. Pratt, in behalf of defendants, being present in open court; and the Court being fully and duly advised in the premises,

IT IS ORDERED that the motion for a new trial herein, be, and the same is hereby denied. [18]

[Caption and Title.]

Judgment.

The above matter coming on regularly for trial, upon March 24, 1914, before Hon. Frederic E. Fuller, Judge, sitting with a jury, the plaintiff appearing by and through C. J. Hurley, its president and its attorneys, Messrs. McGowan & Clark, the defendant, Edwin Richards appearing in person and by and through his attorneys, Louis K. Pratt and Thos. A. Marquam, Esqs., and the defendant, Edward Williams, appearing in person as a witness, not being represented by counsel, and his default having been duly and regularly entered, as prescribed by law; and a jury having been duly impaneled and sworn to try the issues of said cause, and oral and documentary evidence having been introduced in behalf of the respective parties, and the trial of said cause having been continued from day to day until March 26, 1914; and said case having been closed and the issues argued to the jury by the attorneys for the respective parties and the Court having instructed the jury in regard to the law applicable thereto, and said jury having retired to deliberate and thereafter having returned into court, on March 26, 1914, and

rendered their verdict, which is in words and figures as follows, to wit:

“We, the jury duly impaneled and sworn to hear, try and determine the issues in the above-entitled action, do find [19] in favor of the plaintiff and against the defendants, Edwin Richards, and Edward Williams, copartners as Richards & Williams, and the defendant Edwin Richards, and do find that there is now due and owing and unpaid from said defendants to plaintiff the sum of thirty-five hundred dollars principal due on the note sued on in the above-entitled action, together with no interest thereon, together with an attorney’s fee for plaintiff’s attorneys in the sum of \$750.00.

Dated March 26th, 1914.”

which said verdict was duly received and filed and entered, in the manner prescribed by law; and the defendant, Edwin Richards, having thereafter, and within the time prescribed by law, filed a motion for new trial, and said motion having been duly argued and submitted to this Court and denied; and it further appearing to this Court that after the institution of the action certain real and personal property belonging to defendant Richards was attached at the instance of plaintiff and that said attachment has never been set side; and all and singular the law and the facts being fully understood and considered, and the Court being fully and duly advised in the premises, now, upon motion of Messrs. McGowan & Clark, attorneys for plaintiff,

IT IS ORDERED, ADJUDGED AND
DECREEED:

1. That the plaintiff have and recover from Edwin Richards and Edward Williams, copartners as Richards & Williams, and from the defendant Edwin Richards, as an individual, the sum of thirty-five hundred dollars (\$3500.00), together with an attorney's fee in the sum of seven hundred and fifty dollars (\$750.00):

2. That plaintiff have and recover from the defendant, Edward Williams, as an individual, the sum of thirty-five hundred dollars (\$3500.00), together with interest thereon from February 24, 1911, to date, at the rate of twelve per cent (12%) per annum, amounting to the sum of Thirteen Hundred Twelve and 50/100 Dollars, and an attorney's fee in the sum of Seven Hundred and Fifty Dollars (\$750.00):

3. That the plaintiff have and recover from the defendants, [20] Edward Williams and Edwin Richards, copartners as Richards & Williams, and Edwin Richards and Edward Williams, as individuals, the costs of this suit, to be taxed by the clerk; and

4. That the attachment lien of plaintiff on property of the defendant Richards be foreclosed and the property so attached sold by the United States Marshal in the manner prescribed by law, and the net proceeds thereof, or as much thereof as may be necessary, applied by said United States Marshal as a payment upon the judgment above rendered.

Done in open court this 20th day of April, A. D. 1914.

F. E. FULLER,
District Judge.

Entered in Court Journal No. 12, page 909.

Due service of the within judgment and receipt of a copy thereof are hereby acknowledged this 20th day of April, 1914, form not objected to.

LOUIS K. PRATT & SON and
THOMAS A. MARQUAM,
Attorneys for Deft. Richards.

[Endorsed]: No. 1815. In the United States District Court, Territory of Alaska, Fourth Division. American Bank of Alaska, Plaintiff, vs. Edward Williams et al., Defendant, Judgment. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 20, 1914, Angus McBride, Clerk. By P. R. Wagner, Deputy. [21]

[Minutes of Court—March 27, 1914.]

[Caption and Title.]

Now on this day, upon motion of Louis K. Pratt, attorney for defendants, John A. Clark, attorney for plaintiff, being present and consenting thereto,

IT IS ORDERED that the plaintiff herein have sixty (60) days within which to prepare, file, and have settled a bill of exceptions herein.

It is also ORDERED that the bond on Appeal herein be, and the same is fixed at seven thousand dollars (\$7,000). [22]

[Minutes of Court—May 23, 1914.]

[Caption and Title.]

Order Extending Date for Filing and Settling Bill of Exceptions.

Now, on this day, on motion of Louis K. Pratt, attorney for defendants, Thos. A. McGowan, attorney for plaintiff, not objecting thereto,

IT IS ORDERED that the time within which to file and settle Bill of Exceptions be, and the same is hereby extended to and including June 26, 1914.
[23]

[Caption and Title.]

Bill of Exceptions.

BE IT REMEMBERED that this action came on regularly for trial before Honorable Frederic E. Fuller, Judge, at 10 o'clock A. M., on Tuesday, March 24, 1914. A jury of twelve men, having been sworn and examined on *voir dire* and accepted by the respective parties, were duly sworn and empaneled as the jury to try the case. Louis K. Pratt & Son and Thomas A. Marquam appeared as attorneys for answering defendant Richards, and Messrs. McGowan & Clark as attorneys for plaintiff. Mr. Clark made an opening statement on behalf of plaintiff, and Mr. Pratt an opening statement on behalf of defendant Richards, whereupon the following proceedings were had and testimony was taken:

[Testimony of Edward Williams, for Plaintiff.]

EDWARD WILLIAMS, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

“My name is Edward Williams. I am one of the defendants in this action. I am well acquainted with Mr. Richards, have known him ten or twelve years intimately. I have worked a good deal for Mr. Richards. In the early part of September, 1910, I was on Cache Creek in the Hot Springs District. I had been working for Mr. Richards, the defendant in this action, that summer. Earlier in the year I received a letter from a man named [24] Boulton in the Iditarod. I don't know whether I showed that letter to Mr. Richards for him to read, I couldn't say, but we discussed the letter. I had known Mr. Boulton as long as I had known Mr. Richards. I couldn't say the exact number of years. I remember the receipt of a telegram by Mr. Richards in the latter part or middle of September, 1910. (Telegram handed to witness.) This is the telegram.”

Mr. CLARK.—We ask to have this introduced in evidence as Plaintiff's Exhibit “A.”

The COURT.—It may be admitted.

(Marked Plaintiff's Exhibit “A,” and read to the jury.) [25]

Plaintiff's Exhibit "A" [Telegram, Dated September 12, 1910, John Boulton to Dick Richards].

**SIGNAL CORPSE, UNITED STATES ARMY.
TELEGRAM.**

RECEIVED AT

23

2 GI N Z 23 Paid

1

Kaltag Als Sept 12th/10.

Dick Richards,

Hot Springs Als

Send two thousand at once, through N C fifty thousand at stake twelve dollars foot. Freeze out game don't fail see letter. answer.

JOHN BOULTON.

7 15 PM

[Indorsed]: #1815. Pltffs. Ex. "A." Third Trial. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 25, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy.

"Mr. Richards got that telegram at Cleveland's and Howell's on Cache Creek. I was staying in his cabin at the time. He got the telegram over the phone. It was telephoned from Hot Springs. After he came home to the cabin, Mr. Richards and I had a conversation with reference to the telegram. I couldn't just state what the character of the discussion was. We talked the matter over and I think he knew something about the matter—the contents of the letter I had received from Boulton earlier in the

(Testimony of Edward Williams.)

season—because at the time I received the letter there was a friend of mine and of Mr. Richards going to the Iditarod, and I think Mr. Richards phoned to him to have him look the proposition up. That night, after receiving this telegram, Mr. Richards and I may have discussed it about me going down there, but I couldn't say for sure." [26]

A. Yes, sir. We passed our remarks about him, what kind of a boy he was. I always thought he was all right, and I spoke pretty favorably of him. I had no money. Mr. Richards knew that. I had been working Richards' ground there, that summer, and I was in debt to Mr. Richards at the time, and he knew it, that my partner and I were in debt to him at the time.

Q. Was there anything said that night about you going down to the Iditarod?

A. Yes. We discussed it, but I can't say just what the nature of the conversation was.

Q. Was there anything definite agreed upon that night?

A. No, I don't think there was anything definite.

Q. What happened next in regard to you going to the Iditarod? What did Mr. Richards do?

A. He gave me a check for \$2,300.00 and \$200.00 in currency.

Q. When was that done?

A. I think the following morning.

Q. Where did it happen? A. On Cache Creek.

Q. What was the conversation at the time this

(Testimony of Edward Williams.)

money was given to you and what was agreed between you in regard to what you should do with it, or where you were to go?

A. I was supposed to go down there and use my own judgment.

Q. What were you to do with the money when you got there? Were you to keep it, or buy something?

A. Oh, I was supposed to make a purchase. I was to use my judgment, in reference to any transaction.

[27]

Q. If you purchased anything, what were you to do with it? A. Work it, I suppose.

Q. Was there anything said between you and Mr. Richards in reference to what would be done with any profits from anything that you purchased?

A. No, sir.

Q. He just gave you the \$2,300.00 draft or order, and \$200.00 in currency? A. Yes.

Q. Was that order given there on Cache Creek, or given in Hot Springs?

A. I claim it was given on Cache Creek.

Q. What was it in the nature of—was it a paper that was given to you?

A. It was a check that Mr. Richards issued to me.

Q. A check on what?

A. On whatever bank it was that Mr. Richards transacted his business with.

Q. Was it a check on a bank in the Town of Fairbanks?

A. I couldn't say whether it was payable at the N. C. in Fairbanks for sure, or a bank in Fairbanks,

(Testimony of Edward Williams.)

because Richards at that time hadn't the amount of money that he required, that is, had it in the bank here at the time.

Q. What happened with that check after you received it—what did you do?

A. I turned it over to Mr. Richards again at Hot Springs.

Q. About when was it after the telegram was received? A. It must have been a day or two.

Q. What happened when you turned it over to the N. C. or to Mr. Richards at Hot Springs?

A. I got a letter of credit from the N. C. Company.

Q. On what station? A. On Iditarod.

Q. For how much? A. \$2,300.00. [28]

Q. Did you have any other conversation, between the time the telegram came and the time you left Hot Springs, with Mr. Richards about what was to be done when you got to the Iditarod?

A. No. I remember Mr. Richards saying in the store, he said this: "If there is no confliction with that ground, we will go stronger than that."

Q. That was how long before you took your departure?

A. That was in the evening, quite late in the evening, because I pulled out at 4 o'clock in the morning.

Q. How did you pull out?

A. Mr. Richards had hired a young man by the name of Sam Campbell to row me to Gibbon.

Q. You went in a small boat?

A. Yes, he hired him, and paid his way there and back.

(Testimony of Edward Williams.)

Q. You say Richards had engaged that boat?

A. Yes, sir.

Q. Who paid for the hire of the boat?

A. Richards.

Q. Between the time the telegram came and the time you left, did you discuss anything further about this Boulton lay, or any other proposition, in the Iditarod?

A. No more than we talked the matter over. We couldn't say much more about it, because what information we had was rather limited, you know. We didn't know. In the meantime I had heard some information from a fellow down there by the name of Merrifield.

Q. State whether or not Mr. Richards knew you had gone to see Merrifield. A. Yes, sir.

Q. Tell what happened in connection with seeing Merrifield. [29]

A. He says: "We will go down town and see him." And I walked down to Tofty that night, and I goes to see Merrifield.

Q. Was that the night the telegram came, or the next night, or when?

A. That I couldn't state positively.

Q. And you went down town. A. Yes, sir.

Q. That was at Tofty. A. Yes.

Q. Did you see Merrifield? A. Yes, sir.

Q. What did Richards say about seeing Merrifield? What were you going down to see him for?

A. I was going down to find out something about that ground.

(Testimony of Edward Williams.)

Q. Had Merrifield been in the Iditarod?

A. Yes.

Q. Go ahead. Did you see Merrifield?

A. Yes.

Q. Did you have a talk with him? A. Yes.

Q. Was Richards present at the time?

A. No, sir.

Q. After having that talk with Mr. Merrifield, did you come back and talk with Richards?

A. We came home together that evening from Tofty, and I talked the matter over with Mr. Richards.

Q. What, if anything, did you tell Mr. Richards in regard to what Merrifield had told you?

A. That it looked very favorable; that he had a good thing down there.

Q. Did Merrifield know anything about the Boulton lay? A. Yes. He had been on the creek.

Q. How long after that was it that you went to Hot Springs?

A. Well, now, I can't just state, because Richards went to Hot Springs before me. And I was at Tofty when I received the telephone from Richards telling me that if I could get to Gibbon on a small boat I could catch the Susie or Sarah, I don't remember which one. [30]

Q. How long after you got that telephone message from Richards did you get to Hot Springs?

A. The next morning.

Q. Can you tell how long it was between the time the telegram was received and the time you went to

(Testimony of Edward Williams.)

Hot Springs to take the small boat?

A. No, I could not, positively.

Q. Was anything said about Mr. Richards going down to Iditarod?

A. No, not to my knowledge; no more than he might have said he was too busy to go himself—something to that effect.

Q. I will ask you this: Did you borrow the money from Mr. Richards? A. No, sir.

Mr. CLARK.—Q. Was there anything further said between you and Richards in regard to what would be done with any property that you might acquire?

A. No, sir.

Q. You say you left in a small boat.

A. Yes, sir.

Q. Did you catch one of the packets at Gibbon?

A. Yes, sir.

Q. When did you reach the Iditarod?

A. The latter part of September—the very latter part of it.

Q. What did you do with the money that you took down with you?

A. I took my letter of credit to the N. C. and got my money.

Q. Then what did you do with the money?

A. I first took it to the Miners & Merchants' bank.

[31]

Q. How did you deposit it there?

A. In my own name, I think, there.

Q. Did you make any investigations of the Boulton lay there—after?

(Testimony of Edward Williams.)

A. Yes, sir. I went out to the creeks and looked the matter over.

Q. Did you come back to Iditarod after that time and have any conversation with Mr. Hurley, after you had been out to the creeks?

A. I wasn't acquainted with Mr. Hurley at that time.

Q. How did you happen to meet Mr. Hurley?

A. Through Mr. Morgan.

Q. Was that Mr. Morgan formerly of the firm of Morgan & Litsey? A. Yes.

Q. How did it chance that you met Mr. Hurley through him?

A. Well, I had been discussing my purposes with Mr. Morgan, and I told him—previous to that time, I had had a conversation with Mr. Linderberg, the manager of the Miners & Merchants' Bank, and of course I asked him—(interrupted). (Objected to as hearsay.)

Q. Did Mr. Morgan, as the result of that conversation, take you over and introduce you to Mr. Hurley? A. Yes, sir.

Q. What if anything, did you request of Mr. Hurley?

A. Well, I told Mr. Hurley what I wanted to do; that I wanted to buy a half interest in the Boulton lay, or a three-quarters interest—in fact, I bought three-quarters, but I bought the half first.

Q. How much was the purchase price of the half to be? A. \$4,500.00.

Q. How long after that did you buy the other

(Testimony of Edward Williams.)

Q. What, if anything, did you tell him in regard to whose money it was?

A. I told him it was Mr. Richards' money.

Q. What, if anything, did you do in the way of opening an account, in whose name?

A. I started in an account—(interrupted). [34]

Mr. PRATT.—I object as incompetent and irrelevant. There is no *prima facie* showing of a mining copartnership that would authorize evidence either of direct declarations or of conduct such as to make a deposit in that name—in the name of a supposed partnership firm, that would be a basis for that. (Objection overruled. Plaintiff excepts; and exception allowed.)

M. CLARK.—Q. How did you open the account?

A. Richards & Williams.

Q. How much money did you first deposit?

A. Not including the loan?

Q. Yes, without the loan.

A. I think I deposited \$2,000.00 or \$2,100.00 with Mr. Hurley at that time.

Q. Then you say you made a loan. A. Yes, sir.

Q. Did you sign a note for it at the time?

A. I did, sir.

Q. Have you seen that before? (Hands a paper to witness.) A. Yes.

Q. Is that the note that you signed at that time?

A. Yes.

Mr. CLARK.—We offer it in evidence.

Mr. PRATT.—We object to that as irrelevant, incompetent, immaterial, not tending to prove any of

(Testimony of Edward Williams.)

the issues in this case. Here is a note dated October 6, 1910, for \$3,500.00. It is signed Richards & Williams, for Ed Williams. We are willing to concede that is the same money, undoubtedly, or part of it would be the same money that would be represented by the note in action. There is no question about that, I suppose.

(Objection overruled. Defendant excepts. Exception allowed.)

(Note marked Plaintiff's Exhibit "B" and read to the jury.) [35]

Plaintiff's Exhibit "B" [Promissory Note, Dated October 6, 1910, Richards & Williams to American Bank of Alaska].

(Note)

No. 62. Due Jany. 6/11

Fairbanks, Alaska, Oct. 6, 1910.

\$3500.00

On or before Ninety (90) days after date I promise to pay to the order of AMERICAN BANK OF ALASKA, at its office in Fairbanks, Alaska, Thirty five hundred no/100 dollars for value received, with interest after date at the rate of twelve per cent, per annum until paid. Principal and interest payable only in U. S. Gold Coin of the present standard of weight and fineness. For value received, each and every part signing or endorsing this note hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises in case suit is instituted to collect the same or any portion there-

(Testimony of Edward Williams.)

of, to pay such additional sums as the court may adjudge reasonable as attorney's fees in such suit.

RICHARDS & WILLIAMS,

Per ED WILLIAMS.

Note stamped on face in blue ink as follows:

American Bank of Alaska

Feb 25 1911 PAID

Iditarod Branch.

[Indorsed]: #1815. Pltffs. Ex. "B." Third Trial. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 25, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [36]

Mr. CLARK.—Q. Now, after that note was given, what, if anything, did you do towards securing the money? What was done with the money that was secured at that time?

A. Well, there was considerable debts in connection with the ground.

Q. Did you use it? A. Certainly.

Q. Did you draw checks against the account?

A. Yes, sir.

Q. I show you this and ask you if you have seen it before? (Hands a paper to witness.)

A. Yes, sir.

Q. Is that the way checks were signed against the account? A. Yes, sir.

Mr. CLARK.—We offer this in evidence.

Mr. PRATT.—We object to that as incompetent, irrelevant, does not tend to prove or disprove any of the issues in this case. It must be offered as a declaration of this party that Richards was his part-

(Testimony of Edward Williams.)

ner. It is signed Richards & Williams, per Ed Williams.

The COURT.—I take it that that *it* is not the purpose, but that it is to show the transaction. Objection overruled.

(Defendant excepts. Exception allowed. Marked Plaintiff's Exhibit "C," and read to the jury.) [37]

Plaintiff's Exhibit "C" [Check, Dated December 5, 1910, Richards & Williams to John Lund].

IDITAROD, ALASKA, Dec. 5th, 1910.

No. ———

AMERICAN BANK OF ALASKA.

Pay to the order of John Lund \$70.00 Seventy Dollars.

RICHARDS & WILLIAMS.

Per ED WILLIAMS.

Marked on face in blue ink stamp:

American Bank of Alaska.

PAID Dec 5 1910

Iditarod, Branch.

Indorsed as follows:

John Lund

William Casey Per B. L. Morris.

[Indorsed]: #1815. Pltffs. Ex. "C." Third Trial. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 25, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [38]

Mr. CLARK.—Q. That check that was introduced in evidence payable to John Lund, what did that money represent?

(Testimony of Edward Williams.)

A. We had a drill on the ground—the boys had.

Q. Was that part of the consideration of the purchase— A. Certainly.

Q. —the payment of that debt, or had that been contracted before?

A. It was one of the debts that I assumed when I made the purchase.

Q. I show you a bundle of checks (hands papers to witness), and ask you if those checks were signed by you. A Yes, sir; those were signed by me.

Mr. CLARK.—We offer those checks in evidence, showing the manner of the signature in connection with this transaction.

Mr. PRATT.—We object to these as evidence in this case for this reason: They are evidently—when they bought that lay from Boulton and the interest from the other two men, Kennedy and Shively, they had a lot of debts there, and, instead of paying the money directly to them, he paid their creditors; and these are the checks, and that was the testimony before, but it don't signify anything.

Mr. CLARK.—With that statement and stipulation, we withdraw them.

Q. After you gave this note that has been introduced in evidence as Plaintiff's Exhibit "B," did you write a letter to Mr. Richards? A. Yes, sir.

Q. I show you this letter, and ask you if that is the letter. (Hands paper to witness.)

A. That is the letter.

Mr. CLARK.—We offer it in evidence, dated October 24, 1910.

Mr. PRATT.—No objection.

(Marked Plaintiff's Exhibit "D," and read to the jury, which exhibit is in the words and figures following, to wit:) [39]

Plaintiff's Exhibit "D" [Letter, Dated October 24, 1910, Ed. J. Williams to Edwin Richards].

Flat Creek, Oct. 24th, 1910.

Friend Dick:

You will no doubt think you are never going to hear from me, but conditions with regards to the mail service are rotten, and to try and get a wire to you was out of the question, so I decided to use my own judgment and do the best I possible *good* and I hope when you have read this letter that its contents will cause you no worry.

I arrived at Twilight City Sept. 27th, and found Jack waiting for me. We left the next day for the Creek to look over the situation. In the first place I got acquainted with two of the owners at Dikeman on their way outside, and I got busy asking questions about the lay. They spoke very favorable of the proposition, telling me to look over the proposition and satisfy myself. They also said they would like to see Jack make money as he was the first one to locate the pay. I made it a point to see all the owners before to find out if they would consent to the transfer of the lease before I commenced talking business to Jack and his partners. As they did not agree to the transfer of Dave Johnson lay to Doc Madden without a consideration of \$6,000 which he paid, making a total of \$46,000 which he paid for the thousand feet.

I had no difficulty in getting the consent of all the owners. I then commenced looking into Jack's condition of affairs. I discovered nothing of a complicated nature. In fact, Jack had the whole thing in his name. He had mortgaged his half to make a payment which his partners could not meet for \$1500. There was also a great many small debts amounting to about \$2,000.

Now, Dick about the ground. It is undoubtedly good ground, yet I think Jack exaggerated when he stated \$12 to the foot, but the \$50,000 stake. I don't think he did, for I honestly believe the ground will yield \$150,000. I may be wrong and to make a long story short I purchased ($\frac{3}{4}$) three-quarter interest in it for \$6,500. It is a 75 per cent lay 520 feet up and down stream and 1320 feet across.

I must now enlighten you in regards to the way I made the deal. In the first place, the money I had was hardly a starter. Jack had half interest, his two partners the other half. I paid \$4,500 for *there* half, and Jack \$2,000 for a quarter. I assumed all the debts of the half and paid them \$1775.75, \$887.75 cash and the balance in four months time. Also *there* share of the debts which amounted to \$1225.00, the most of which I have paid. Also the mortgage of \$1500 making a total of \$4500. I have only paid \$500 on the mortgage at the time writing. [40]

I have also paid Jack share of the debts \$778. Also \$350 in Cash and the balance \$872 when we can. Now Dick how I got the money is the hardest part for me to tell. You may be angry, but I did not do it with any selfish motive or trying to take advantage of the

kindness you did for me; yet if I had have received you letter, which I got 4 days ago, I don't think I would have bought it, but it was too late.

I deposited the money in the American Bank of Alaska. Mr. Hurley is the manager. I told him the money was yours. He told me in case anything should happen me unless I deposited in yours and my name, you would have some trouble getting it, so I did as he advised, and signed the cheques, Richards & Williams. Now, Dick, I had to have more money. I first goes to the Merchant and Miners Bank and tried to do business with them. He offered to place to my credit dollar for dollar to the amount of \$10,000. That is I would deposit \$5,000, he would give me credit for \$10,000. I couldn't see my way clear to make that transaction, as he wanted a mortgage on the loan and the owners did not care at that time to agree to mortgaging the lease.

So I goes to the American Bank of Alaska and borrows (\$3,500) for 3 months at one percent, with the understanding that it is to be renewed if it is not convenient to pay when due (90) days.

Now, Dick, I had to sign the note Richards & Williams, and I sincerely hope you wont be offended, and I give it to you my word, also Jack's that every dollar we put into the ground purchasing price included, come out of the ground before he get one dollar. It is a proposition you can't loose on. If you don't make \$20,000 out of it I will miss my guess.

You say you want to be on the ground yourself and I assure you I want you to come down; in fact, you have got to come as it requires money to do business

in this camp. It requires heavy machinery as the top has got to be scraped off 6 or 7 ft. of it. It is from 16 ft. to 18 ft. to bedrock. It is hard ground to sluice. They dump it on to almost a flat apron and use a nozel on it from a two or three inch pump which they keep in the cut sufficient to keep out the water. The ground is all thawed. You will *after* pump there is lots of water but can't get up high enough to get good tailing room. Wood is very high, it will cost from 12 to 15 a cord on the claim. So you can see why you should here.

I bought a 40 H P boiler from T. Aitken, \$2200, \$700 down and gave my note for the balance. I did not use your name on the note. It is due the 1st of June. Now, Dick, my money is getting pretty low, that is, I have no money to do business with, such as machinery and wood. That is the reason I want you to come down. I know Dick this proposition places you in rather an awkward position and I sometimes wish I had never gone into it when I think of the position it places you in. It will mean at least 2 years work on this ground alone, but what of it, Dick, when it is a sure thing? [41]

I have lots of grub for the winter and a nice cabin on the ground and the lumber and boxes on the lay cost about \$250. Jack is leaving to-morrow for the upper Iditarod with a prospecting outfit, intending to stay for the winter. He don't want anything to say about the working of the layout. He wants you to take it and do what you like. I will be all alone. Will find a little work to do cutting brush out on the claim and may pick up 30 or 40 cords of wood.

Tom Burns as the lay below—he 1000 ft. 70 per cent Strandberg Brothers $\frac{2}{3}$ lay of Ester next, Henderson who used to haul wood on Dome next, G. Friend 60 percent next, Ronan and Monckmon (60 percent) next. Above me is a 500 ft. lay which could be bought. They are asking \$15,000 for it. They have been offered \$11,000 for it. Then the Gugg, Dave Johnson, D. Madden, T. Aitkens. It is reported Aitkens took out \$200,000. Dr. Madden \$170,000, The Guggs were hoisting 1000 a day or better so the owners to the ground told me with a small crew. This so you can judge for yourself how this proposition looks to me.

Now, Dick, whatever I have done I hope will meet with your approval, as I want to do what is right by you.

I am in town—have been in for a day or two getting an outfit for Jack and getting the Bill of sale for the $\frac{3}{4}$, have it made out to you and me, which I hope will be satisfactory.

Mr. Aitken will call on you and explain the conditions in this camp and will enlighten you a good deal.

Tom Williams is over on the Kuskerwin prospecting. Shorty Greggan also. I saw him a few days ago. He has nothing fat. John Johansa Earn are both hear, not doing any think.

I must now close hoping to hear from you or else see you in the near future.

Sincerely yours,

(ED. J. WILLIAMS),

Flat Creek, Iditarod, Alaska.

(Testimony of Edward Williams.)

Envelope addressed as follows:

Edwin Richards Esq,

Cash Creek, Alaska.

On corner: From E. J. Williams,

Iditarod, Alaska.

(Marked as registered.)

[Indorsed]: #1815. Pltffs. Ex. "D." Third Trial. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 25, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [42]

Mr. CLARK.—Q. Now, after writing that letter to Mr. Richards, did you receive any reply?

A. Yes, sir.

Q. First, however, did you send the letter away by registered mail? A. I think I registered it.

Q. Is that the envelope in which you sent it? (Producing.) A. It is.

Mr. CLARK.—We ask that this be introduced as a part of the letter and exhibit.

Mr. PRATT.—That is all right.

Mr. CLARK.—Q. I ask you to examine that letter (handing same to witness) and state whether or not that is the reply you received to the first letter that has just been introduced in evidence.

Mr. MARQUAM.—What is the date of that?

Mr. CLARK.—December 8th. Q. Is that the letter?

A. Yes. I received that letter.

Mr. CLARK.—We offer it in evidence.

The COURT.—It may be admitted.

(Letter marked Plaintiff's Exhibit "E" and read

to jury, which exhibit is in words and figures following, to wit:) [43]

Plaintiff's Exhibit "E" [Letter, Dated December 8, 1910].

Taft, Alaska, Dec. 8th, 1910.

Friend Ed:

Received your registered letter last night, 7th, and other two letters Monday night, 5th. I would have answered them on the return mail, only when you address to Hot Springs, the letters go there first. They should be addressed to Taft from that direction. I was rather surprised on reading your letter. You are going some, I did not see T. Aiken. I heard he went past here 2 weeks ago, so I called him on the phone at Hot Springs. He told me you purchased 1/2 interest in the lay, and he thought it was good ground, asked me if it would be all right about some money due first of June, so I told him I didn't know a thing about anything, as I had no word whatever. He thought I would have been informed about it and that was all. As I said I was surprised as it's been so long since you left I would have knowed something before. First of all, I want to ask you, as you say nothing about it, is that 5.00 or 8.00 ground located on that lay. I never heard it was a yet, neither on that lay above. They surely would buy that as well as Dave Johnson's lay if they could show the goods. I hope you have it there. Regarding coming down there, you know Ed that I paid cash for ground here before you left, and it would be almost impossible for me to leave this place, unless I was rid of everything I have here, and if I came

down there to work ground, I would certainly bring my machinery down. I couldn't go to work and buy machinery there while I have this on hand, and besides I have contracted 300 cords of wood and over, and partly paid for, which means over \$2,000. You, Dan and Jack should certainly be able to work that ground. I realize you have put yourself under considerable obligations. What on earth did you make all them due in three and four months, come due in the heart of winter, when there is no possibility to raise a dollar. Regarding that account at the Bank in both our names, that is certainly a mistake. When I gave you a check for the money and you gets a letter of credit on it, my name should not be used at the Bank. I never had the least idea you should assume any obligations beyond what would relieve the situation and what Jack called for at the time, and now when I see Jack gets some of the money himself and takes to the woods. And whatever became of that letter he was sending, never showed up here as yet. Well, now Ed to make this short, I believe the best way out of this, you should try and get some of them moneyed fellows down there to go in with you. Consider me out of it altogether. Doubtless you should have no trouble in doing business with that kind of ground, and with people there that knows it. I figure I have as much at stake here, although I may have nothing, but it's certainly easier for many of them to leave Hot Springs than me, and also I am having a little anxiety regarding my head. I don't know but there's a head datch or something remaining and am liable to be required to seek med-

ical aid any time, so it wouldn't do for me to be there. There is a mail leaving in the morning and I must take this to Kelly to-night, so I am sending at the earliest possible. [44] I don't know how long it will be getting there. I realize Ed that you mean all right, and I sincerely hope you will make out all right. When I said I would like to be on the ground myself, I meant it, in so far when it requires so much expense to start, as it seems to there. At the same time I had no thought of coming down there, at the time, as I thought you and Jack capable of working any ground if you try, but after I talked with several from there after you left, I did not think you would go into it, as I haven't seen anyone knew that Jack had pay outside of Dolar and half to foot ground and that wouldn't be worth working in that country. So I went ahead contracting obligations here, and must stay with it. If you manipulate another deal, it would be better for you to have the Bill of Sale made over from the old laymen. I sincerely hope you'll make out all right. You are perfect welcome to use that money until you can make it. There is nothing new here. There was a small find made out on a creek near Fish Lake by Tom Lockhead. Gus is down prospecting with Patten. They are getting some prospects. I have my fifth hole near down at mouth of Dalton, but haven't anything as yet. Dick Morris and partners sold out to Howell. Dutch is taking out a dump on the Eureka. Will enclose. Kindly let me know if you make out all right. It seems to me you could easily make some transaction to advantage on that kind of ground. I don't care to go any more. In

(Testimony of Edward Williams.)

fact I can't at present and the only way I would do any more would be bringing my plant down. I wouldn't think of buying machinery. With sincerest wishes for success.

Yours, DICK.

[Indorsed]: No. 1815. Pltffs. Ex. "E." Third Trial. Filed in the District Court, Territory of Alaska, 4th Div. March 25, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [45]

Mr. CLARK.—In your letter that you wrote on October 24, you state that you probably would not have gone in if you had received his letter which you state you had received four days before. I show you this letter (handing same to witness), dated September 21st, and ask you if that is the letter you referred to in the letter you wrote to Mr. Richards.

A. I received that from Mr. Richards.

Q. Was that the one that you referred to that you had received four days before you wrote the one of October 24th?

A. Allow me to see it again. (Letter handed to witness.)

Q. In your letter of October 24th, you said you probably would not have gone as strong if you had received his letter before you made the loan. What I want to know is: If this is the letter that you referred to.

A. I couldn't say whether that is the letter or not; whether it is a reply to that one or not.

Q. That is September 21st. What date did you leave Hot Springs?

(Testimony of Edward Williams.)

A. It was the 27th when I got to Twilight City. It must *have about* the 18th or 19th.

Q. Is that a letter that you received from Edwin Richards? A. Yes, sir.

Mr. PRATT.—We object, because he can't identify it that way. It is incompetent and immaterial.

The COURT.—It speaks for itself.

Mr. MARQUAM.—It may speak for itself, but that does not identify it as the letter that Mr. Williams referred to in that letter that has been introduced.

The COURT.—It may be admitted.

(Defendant excepts; allowed. Letter marked as Plaintiff's Exhibit "F," and read to jury.) [46]

Plaintiff's Exhibit "F" [Letter, Dated September 21, 1910].

Fairbanks, Alaska, Sept. 21st, 1910.

Dear Ed.

Have met people on the Str. coming to Fairbanks, and others after arriving here, and from what I learn, Jack has a promising lay on the Wildcat, but from what they all say, its in a complicated condition. He has partners, several complicated transactions has occurred, and I don't believe its advisable for us to go into it. We couldn't get no interest of any value, and its going to take a good deal more money to handle it than what you have, possibly not now, but in the future he will have to get big machinery to work it, and I don't care to go into it that steep, unless I could be on the ground to attend operations

myself, so if you have not interested yourself in it by the time you get these lines, I would advise you to call it off as far as I am concerned. Keep enough money to secure yourself, and return balance to my credit at N. C. Hot Springs, through a draft like you had. I will let you know how things is looking on the lay, if I can get word off on some Str. after I get back to the Springs.

Johnie Johanson who is bringing this letter is coming down, I believe Jack exaggerated his telegram considerable, as regard 12.00 to foot. From all these people I've seen 7.00 is about the best there is anywhere on Flat so far, and as far as his lay is concerned he has nothing located to compare with those figures. But if you have already invested anything in it, I trust you have investigated all those complicated transactions that lay has underwent. Otherwise we will be in lawsuits head over heels. Of course 7.00 ground is good enough for anybody at that, and what I learned from others is not to be depended on. You will learn the facts better right there on the ground far better than I can, so can use your own judgment accordingly. I sincerely hope that Jack has his affairs in far better shape than what I learn. He surely deserves better success after trying so hard. Convey best regards to all the boys, and will try and get a few words off after I get to Springs. Am going back to-morrow.

Wishing you good success, will remain,

Yours,

DICK.

(Testimony of Edward Williams.)

[Indorsed]: #1815. Pltffs. Ex. "F." Third Trial. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 25, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [47]

Mr. CLARK.—Mr. Williams, did you receive this letter before or after you made the borrow from the American Bank of Alaska of the \$3500?

A. That letter I received after I had made the borrow.

Q. How long after you borrowed the money?

A. I don't know just exactly.

Q. How long does it take mail usually to go from *Fairbanks* to Iditarod? Say, in the winter of 1910?

A. About thirty days. We had a monthly service there.

Q. Do you remember the date you received it?

A. No. I can't recollect.

Q. After you had received that first letter from Mr. Richards dated the 8th of December, 1910, did you receive another letter from him dated in the same month? (Hands letter to witness.)

A. I received that letter.

Mr. CLARK.—We offer this letter in evidence.

The COURT.—If there is no objection, it may be admitted.

(Letter marked as Plaintiff's Exhibit "G" and read to jury.) [48]

Plaintiff's Exhibit "G" [Letter, Dated December 26, 1910].

Taft, Hot Springs, Alaska, Dec. 26, /10.

Friend Ed:

Rec'd your note yesterday, Xmas day. Regret to note your discern me to doubt your honesty, which I sure don't or ever meant anything to convey that impression. What bothered me was to have these fellows come after me for the money which I did not know anything about. Regarding your going down there I don't understand why you would be sorry about. Trust you had my previous letter. Its certainly I am not going to worry anything about, since you put the money into it, go to it and make something out of it. I imagine the proposition must be all right. I would be only too glad to come down there if I was footloose here, but you know my position here as well as me. I don't see how you thought I could come down there. It's certainly had no intention of it last fall, or else would go down there then. As you know I looked at the thing to be of mutual advantage to both of us, but I did not calculate on putting more money than what you had; in short Jack got what he asked for in doing that and the extra money you got. I had no intention of going any further, as I took it for granted in getting that amount Jack could carry along, but that don't hurt the proposition any, if its good, its good. I can believe you as well or better than anyone else I talked with regarding it. Remember Ed in all your

letters you have said nothing about the prospects in that particular piece of ground, only that you believed there was 150,000\$ in it. However its immaterial if there was a million in it, and I hope there is, I have done to much preparations here to leave being you have that much money invested already you should have no trouble in getting someone interested to carry the thing through. Go at it and make something out of it and don't worry about my part. I am sure you havent lost anything that shows around here so far, you have it all to win. Everybody around here things you have done a good thing and that you will make a stake out of it. Gus and Patten is leaving for the Hosiana, Patten having a letter from McGaff advising him to come there. Dick Morris and Co. sold their lay to Howell, \$1,000, on bedrock, and went cutting wood. Bob is going to work on Midnight-Sun—Nothing else new of any importance. With best wishes for success,

Yours,

DICK.

[Indorsed]: # 1815. Pltffs. Ex. "G." Third Trial. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 25, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [49]

EDWARD WILLIAMS resumes his testimony of direct examination.

Mr. CLARK.—Q. Mr. Williams, at the end of 90 days, the time when that note fell due—the note that has been introduced in evidence—did you see Mr. Hurley or have any conversation with him about the note? A. Yes, sir.

(Testimony of Edward Williams.)

Q. What, if anything, was said between you and Mr. Hurley at that time?

A. I told him that I had a letter from Mr. Richards, and that he wouldn't do any more at present.

Q. Then what, if anything, was done? Was there anything done about that mortgage?

A. The mortgage was given until February, I think. That was sometime after the note was due, Mr. Clark.

Q. Did you have any conversation between the time the note fell due and February when the other note was given?

A. Not of any importance that I can recollect.

Q. Then tell what happened in February at the time the mortgage was given.

A. Well, having received Richards' letter asking me for to take someone else into the proposition with me, I started to look around for somebody, and I got a couple of boys there—McKenzie and McLellan to go in with me. And I had to give a mortgage as security, you see, for the renewal of this note.

Q. What happened at the time the note was renewed?

A. Well, that is the time that I sold—*how* got McKenzie and McLellan in with me, you see—that is the time I signed the [50] mortgage.

Q. What did you do in regard to the original note—I mean concerning the interest?

A. I got some cash from the boys I had sold to. I paid the interest up to that time on the note.

Q. This note dated October 6th is stamped "Paid

(Testimony of Edward Williams.)

February 25." Did you pay that note at that time? Did you pay the \$3500.00 that was due on that note I mean, in cash? A. No, sir.

Q. What did you do? A. I gave a mortgage.

Q. Did you execute a new note? A. Yes, sir.

Q. I show you this instrument and ask you to examine it. (Hands paper to witness.) A. Yes, sir.

Q. Is that the note that was given at that time?

A. Yes, sir.

Mr. CLARK.—We offer it in evidence.

Mr. PRATT.—We object to it. It is the note in suit, of date February 24, 1911, for \$3500. It is to the American Bank of Alaska. The plaintiff can't take one stand on a certain theory in his pleadings, and then abandon it. This complaint says those men were mining copartners and that is the reason Williams had authority to sign that note notwithstanding Richards was eleven hundred miles away and knew nothing about it. Another phase is that this note is signed in the individual names of these two people: "Edward Williams, Edwin, Richards by Edward Williams, his attorney in fact." One mining copartner or any other kind of a partner has no authority to sign a promissory note in the name of the individuals composing that copartnership; especially here where he asserts that right under a power of attorney, and this witness had already testified that he didn't have any [51] power of attorney. Neither those signatures, or the individual signature by Williams as attorney in fact, have any force whatever. This man has shown by his testi-

(Testimony of Edward Williams.)

mony that these men were not mining copartners, and he has shown that he didn't have a power of attorney.

The COURT.—He said he had no power of attorney, but the question of the relationship between them is a question to be decided in the case.

Mr. PRATT.—Until a *prima facie* case is made, where the execution of a note is denied under oath, as it is here,—until the plaintiff proves *prima facie* that that is an act of the defendant, he cannot introduce it in evidence.

The COURT.—I think a *prima facie* case has been made, Mr. Pratt.

Mr. PRATT.—We formally object to the introduction of that note in evidence—the note that is in suit and that is copied in the complaint,—for the reason that it is incompetent, immaterial; for the further reason that there has not been a *prima facie* showing here so far that that is the note of the defendant Richards; that he ever was a mining partner with this man Williams; and it has been positively shown by this man's testimony that he didn't hold any power of attorney and was not authorized for that reason.

(Objection overruled. Defendant excepts. Exception allowed.)

(Note marked Plaintiff's Exhibit "H" and read to jury.) [52]

**Plaintiff's Exhibit "H" [Promissory Note, Dated
February 24, 1911, Edward Williams et al. to
American Bank of Alaska].**

(NOTE)

No. (379), Due July 1 /11.

Iditarod, Alaska, Feb. 24, 1911. \$3500.00.

On or before July 1/1911 after date, I promise to pay to the order of American Bank of Alaska, at its office in Iditarod, Alaska, Thirty Five hundred & no/100 dollars, for value received, with interest after date at the rate of twelve per cent per annum until paid, Principal and interest payable only in U. S. Gold Coin of the present standard of weight and fineness. For value received, each and every party signing or endorsing this note hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises, in case suit is instituted to collect the same or any portion thereof, to pay such additional sums as the court may adjudge reasonable as attorney's fees in such suit.

EDWARD WILLIAMS,

EDWIN RICHARDS,

By EDWARD WILLIAMS.

His Attorney in Fact.

By EDWARD WILLIAMS.

RICHARDS & WILLIAMS,

[Indorsed]: # 1815. Pltffs. Ex. "H." Third Trial. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 25, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [53]

(Testimony of Edward Williams.)

Mr. CLARK.—Q. Did you execute a mortgage at the time that note was given? A. Yes, sir.

Q. Did you receive any other or further money at the time that note was given, other than the money that had been received and evidenced by the first note?

A. At the time the note was given, did I receive any money?

Q. Yes. A. No, sir.

Q. After that second note was given—the one in suit—did you continue mining operations?

A. We commenced, yes, sir.

Q. Was the venture a success or a failure?

A. A failure.

Q. When did you leave there?

A. In September. I don't know just the day of the year.

Q. What year?

A. I don't know the exact date, or the year. It was in September.

Q. What was covered by the mortgage, Mr. Williams—was it the lay?

A. Yes, Mr. Hurley took a mortgage on the lay.

Q. What became of the lay afterwards?

A. It reverted back to the owners.

Q. Why?

A. Because we couldn't make a success of it.

Mr. CLARK.—Why did it revert to the owners?

A. Because it failed to be a success.

Q. Did you at any time before you left the Iditarod have any communication from Mr. Richards concerning any other business deal than this particular

(Testimony of Edward Williams.)

one? A. Yes, sir.

Q. About what time, do you remember?

A. The early part of September, I don't know the date exactly.

Q. Through what medium was this communication received? [54]

A. By the wireless.

Q. Examine that instrument (hands to witness a paper) and say if you have seen that before.

A. Yes.

Q. Did you receive that on or about the date set forth in the telegram?

A. About that date. I guess on that date.

Mr. CLARK.—We offer this in evidence.

The COURT.—It may be admitted.

(Marked as Plaintiff's Exhibit "I" and read to jury, which exhibit is in words and figures following, to wit:) [55]

[Plaintiff's Exhibit "I"—Telegram, Dated September 12, 1911, Edwin Richards to Edward J. Williams.]

(TELEGRAM.)

(ALASKA WIRELESS TELEGRAPH
COMPANY.)

RECEIVED AT

21 di mc 19.

Fairbanks, Alas Sep. 12, 1911

Edw J. Williams,

Care Ind. Fone. Co. Iditarod.

Buy Curran quietly eight below Dome Creek five

(Testimony of Edward Williams.)

hundred cash money American Bank if possible sell and come answer.

EDWIN RICHARDS.

443 p

Envelope: Printing left-hand corner:

Iditarod Telephone Co

Iditarod, Alaska.

Addressed: Edw. J. Williams

Flat.

No. 11 c/o Idit Telephone Co.

[Indorsed]: #1815. Pltff. Ex. "I" Third Trial. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 25, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [56]

Mr. CLARK.—Q. From the telegram I have just read, did you understand what Mr. Richards required you to do?

A. Yes, sir.

Q. Did you comply with his request contained in that telegram? A. In purchasing it?

Q. Yes. A. Yes, sir.

Q. Where did you get the money?

A. I didn't have any money. I had Mr. Curran make out a deed and had it deposited in the Miners & Merchants' Bank, and I wired to Mr. Richards to send the money and the deed would be withdrawn and forwarded to him.

Q. That is all that you had to do with that transaction? A. That is all to my knowledge.

Q. How long after that did you start back to this country from the Iditarod?

A. Oh, maybe a week.

(Testimony of Edward Williams.)

Q. Where was Mr. Richards when you got back?

A. He was on his way outside when I got to Hot Springs.

Q. When did you first see Mr. Richards after that?

A. The following spring. I don't know the exact date.

Mr. CLARK.—Your witness.

Cross-examination.

(By Mr. PRATT.)

Q. Mr. Williams, you say you had known Richards in the fall of 1910. Had you known him ten or twelve years?

A. Well, not previous to that. Up to the present time, it would be about that.

Q. At this time you have known him about ten or twelve years?

A. Ten or twelve years. Yes.

Q. And Mr. Boulton about the same length of time? A. No, not until some years after. [57]

Q. You worked for Dick Richards here, as they call him, over on Dome, did you? A. Yes, sir.

Q. He was a mining operator there?

A. Yes, sir.

Q. In what capacity did you work there?

A. Cooking. That is, when he *stated* up there I worked out doors and cooked for the three of us.

Q. How long did you work for him on Dome Creek? A. About thirteen months.

Q. Was Boulton over there during that time?

A. He was working in Dome City at the time.

Q. Did you get acquainted with him there?

(Testimony of Edward Williams.)

A. No.

Q. Had you known him before that?

A. Yes, sir.

Q. Where? A. In Dawson.

Q. Had you ever been in partnership with him?

A. Yes, sir.

Q. You were quite well acquainted with him when you saw him over on Dome Creek in 1908, was it, or 1906?

A. I don't know just the year, I am sure.

Q. 1906 or 7? A. About that time.

Q. Or 1908, along in there? A. Yes, sir.

Q. In 1908 Mr. Richards pulled up and got through over here on Dome Creek and took his machinery and everything and went down to the Hot Springs to mine? A. Yes, sir.

Q. You went with him?

A. I went the same year. I didn't go with Mr. Richards.

Q. You followed down there pretty soon after?

A. I went down.

Q. Did you go down to work for him?

A. I didn't know that—(interrupted).

Q. Did you go to work for him after you got there?

A. I worked for other parties first. I helped him build a cabin. [58]

Q. How long did you work for him in the Hot Springs country for wages?

A. From about the 1st of March until about the 15th or 16th of September.

Q. What year? A. 1909, I think.

(Testimony of Edward Williams.)

Q. Yourself and Johanson took over a lease from him on some ground of his in which he was part owner—owned an interest in—didn't you, in 1909?

Mr. CLARK.—We object as immaterial, not cross-examination.

Mr. PRATT.—He spoke of it himself and I want to show the relationship between him and Richards.

The COURT.—Overruled, then.

Mr. PRATT.—Go ahead. Didn't you and Johanson take over a lease from Richards on some mining ground on Cache Creek in the Hot Springs district?

A. Yes, sir.

Q. What year was that? A. 1909.

Q. And you mined there until sometime in the spring of 1910?

A. Yes, that winter and the summer—the previous summer.

Q. That proved to be a sort of a disastrous affair for you, didn't it? A. Yes, sir.

Q. Mr. Richards advanced you ten or fifteen hundred dollars or more?

Mr. CLARK.—Objected to as immaterial. He said when he went down there he was indebted to Richards in some considerable sum of money. (Objection overruled.)

A. About the money advanced?

Mr. PRATT.—Yes. How much money did he advance in all?

A. He didn't advance it to me alone, but to the other partner, too.

Q. How much? [59]

A. Nine hundred and some odd dollars in cash at

(Testimony of Edward Williams.)

Mr. Morrison's, that Mr. Morrison had borrowed from Richards. I don't know that Mr. Richards left that for me there at the time.

Q. You got the nine hundred dollars credit and over at Morrison & Saul's, you and your partner?

A. Yes, sir.

Q. Through Richards? A. Yes, sir.

Q. And something besides that, too.

A. There was some meat and wood and things that Richards—

Q. You say about four or five hundred dollars?

A. I don't know exactly the amount.

Q. When you quit mining there in the spring of 1910 you owed Mr. Richards six or seven hundred dollars, didn't you? A. Yes, sir.

Q. Ain't this true: That during the summer of 1910 you concluded that that lay on Cache Creek in the Hot Springs District wasn't going to turn out very good? A. I proved it.

Q. You thought so during that period of time?

A. It was a fact.

Q. Now, isn't it true that you opened negotiations sometime during the early part of 1910, and during the spring and summer, with a man by the name of Jack Boulton on Flat Creek, this same Jack Boulton that you knew on Dome Creek?

A. I opened no negotiations with Boulton. I received a letter from Boulton, and I also answered it.

Q. You received a letter from him? A. Yes.

Q. What was the purport of that letter?

A. It was explaining the conditions down there and the chances that he had there.

(Testimony of Edward Williams.)

Q. He told you about a lay that he had on Flat Creek? A. Yes, sir.

Q. Did he tell you who his partners were? [60]

A. I can't recollect.

Q. What? A. Not his partners at that time.

Q. You found out afterwards his partners' names were Kennedy and Shively?

A. When I went down there they were. Yes.

Q. Where is that letter that you got from Boulton? A. I don't know.

Q. Have you got it yet? A. No, sir.

Q. Did you ever show that to Richards?

A. The letter that—(interrupted).

Q. That Boulton sent up to you?

A. The one he sent in the spring?

Q. Yes—whenever he sent it.

A. I think I discussed the letter with Richards. I don't say that I showed it to him.

Q. About what time did you get that letter in the spring of 1910 from Boulton?

A. Navigation was opened up because I got that letter the time Mr. Richards' friend was on his way down to the Iditarod?

Q. Richards' friend?

A. Yes. Thomas Williams.

Q. Had you been talking to Richards about Boulton and his lay before you got that letter?

A. I wouldn't be positive.

Q. Hadn't he sent you word by somebody that had come up from there? A. Mr. Boulton?

Q. Yes.

A. No. I don't think he made it a point to send

(Testimony of Edward Williams.)

me any word. I think I made inquiries.

Q. Didn't he, either by sending you word, or in this letter, [61] want you to come down there and buy in with him; that he was having difficulties with his partners? A. I can't recollect.

Q. Didn't he make some overtures to you of that kind—of that description?

A. No. I couldn't say that he did.

Q. Do you want to say that he didn't?

A. In reference to having any trouble with his partners—

Q. Didn't—(interrupted).

Mr. McGOWAN.—Let him finish his answer.

The COURT.—Had you finished your answer?

A. No. When I received this letter the partners that were his partners, when I went down there were not his partners at that time. He had a partner previous to those.

Mr. PRATT.—Q. I don't care so much about that. But didn't that letter invite you to come down there and put in with him—buy an interest in that lay with him? A. Well, I can't recollect.

Q. Didn't he propose to sell you a quarter interest in this lease for \$2,000.00, in his letter?

A. No, sir.

Q. Did he say anything about any amount that he wanted, in the letter?

A. Not in the letter that I received in the spring.

Q. Did he send you any other letter than that?

A. The letter that he wrote that the telegram refers to, I received in the Iditarod after I got down there.

(Testimony of Edward Williams.)

Q. Did you receive any other letter than the ones you have admitted receiving, from Boulton?

A. Not to my knowledge.

Q. What if anything was in that letter about you coming down [62] there and buying in with him in a lease? Can you give the jury any idea what it was?

Mr. CLARK.—He has not testified there was anything.

A. No, sir, I can't.

Mr. PRATT.—Q. Isn't it true that there was something in that letter about you coming down there and becoming interested and buying in with him in the lease? A. I can't admit it.

Q. Wasn't there? A. I can't admit it.

Q. If you can't admit it, how does it come that you talked right after that with Richards about going down there and buying in with Boulton?

Mr. CLARK.—We object, as not the testimony.

A. In the spring?

Mr. PRATT.—Q. Yes If there was nothing in Boulton's letter about that, how did it come that you were talking to Richards on that subject?

A. About buying?

Q. Yes, about going down there, and about Boulton having a lay there, and it was a good thing, and that he wanted to sell an interest in it. You have told the jury you were talking with Richards about that. If you were, how could you do it, unless Boulton had written to you something of that kind?

A. We may have discussed the proposition. But I won't admit that he wanted me to come down and

(Testimony of Edward Williams.)

buy in with him.

Q. What will you admit that he said about his lay and about wanting to sell it?

A. I can't admit anything of him trying to sell it to me.

Q. What was said on that subject? [63]

A. He may have and he may not. I can't recollect.

Q. Did he ask you to come down there, in that letter? A. I can't recollect.

Q. Did he invite you to interest yourself with him in any way, in that letter?

A. I can't recollect the contents of the letter.

Q. What? A. I can't recollect.

Q. You *discuss* this letter with Richards, though, didn't you? A. We talked the matter over.

Q. The talk with Richards had reference to Boulton's lay on Flat Creek, and that he wanted to sell an interest in it, didn't it? A. I can't admit it.

Q. You can't remember it? A. I can't admit it.

Q. Do you want to deny it?

A. I am very uncertain on that point.

Q. Did you know from that letter who Boulton's partners were at that time? A. No, sir.

Q. Did you know from that letter whether he was having any difficulty with his partners?

A. No, sir.

Q. Did anybody that he sent to you that was coming from Iditarod to Hot Springs—did they tell you anything about Boulton's lay and who his partners

(Testimony of Edward Williams.)

were and that he was having any difficulty with them?

A. He never sent anyone to me. The only information I found was by inquiry.

Q. Did you by your inquiry find any such a state of facts as that, apparently?

A. Just found out that he had a good proposition down there. [64]

Q. Did you also find out that he wanted to sell an interest in it? A. Not from that party.

Q. Did you find out from anybody that you talked to there in Hot Springs that Boulton was having some disagreements with his partners?

A. I may have. I don't remember discussing that with him, though.

Q. Not with him, but with anybody down there.

A. I don't remember discussing him having any trouble with his partners with anybody. I didn't know his partners.

Q. You don't know now who his partners were when you got that letter from him, or about that time?

A. That is the letter in the spring. The letter was written in March and I got it in June.

Q. You *don't* know who his partners were when you got that letter in June. A. I can't recollect.

Q. When you wrote to him, did you tell him—speak anything about Dick Richards, that he had money? A. When I wrote to Mr. Boulton?

Q. Yes, to Boulton. A. I may have.

Q. Boulton knew Richards on Dome Creek and

(Testimony of Edward Williams.)

down in the Hot Springs too, didn't he? He knew he was a man of means, didn't he?

A. Oh, yes, supposed to know.

Q. Now, speaking of the telegram that is marked Plaintiff's Exhibit "A," third trial (reads): "Kaltag, Alaska, September 12th 1910. Dick Richards, Hot Springs, Alaska, Send two thousand at once, through N. C. fifty thousand at stake twelve [65] dollars foot. Freeze out game don't fail see letter answer. John Boulton." When was that telegram received there—do you know?

A. I don't know the exact date.

Q. About that time, wasn't it?

A. The date—(interrupted).

Q. It came over the telephone first from Hot Springs, did it not? A. Yes.

Q. Isn't it a fact that it came to Mr. Richards over the telephone up there on Cache Creek, and that he took it down, and came down to his own place where you were— A. Yes.

Q. And he came in, and you were in bed, and he showed it to you?

A. Yes, sir, read it to me or showed it to me.

Q. Didn't he say this to you: Told you that there must be some mistake about this; that that telegram must have been intended for you?

A. I believe he made such a remark.

Q. What?

A. I think he made a remark to that effect, that is, he thought so. He discovered that it was not sent to me though. He took it on the phone, as to Richards

(Testimony of Edward Williams.)

& Williams when he first took it, that is, the telegram he received over the phone, but the original doesn't show that.

Q. He and you had some discussion about that that night. A. We talked the matter over.

Q. You understood from this that John Boulton down there at Flat Creek—he was then at Kaltag, however—wired you—

Mr. McGOWAN.—That is the transmitting station.

Mr. PRATT.—Q. He was over there at Flat Creek or Iditarod City or Twilight City—

Mr. McGOWAN.—There was no wireless there at that time on Flat [66] Creek.

Mr. PRATT.—Q. You knew he wanted \$2,000.00 right away to protect himself against a freeze-out game there, didn't you?

A. That is what the telegram says. That is all I had to go by.

Q. He said he had ground there that would go \$12.00 to the foot. A. That is what he did.

Q. It speaks of a letter there. Didn't that letter afterwards come up, addressed to you?

A. It must have come to me, because I got it in the Iditarod.

Q. That is the same letter that is referred to in this telegram?

A. It must be. It is the only letter.

Q. What, if anything, did you say about that? Was there anything definite talked between you that night? A. Richards and I?

(Testimony of Edward Williams.)

Q. Yes. A. In regard to the telegram?

Q. Yes.

A. I can't say what the talk was. I know we discussed the letter. That is all.

Q. You told the jury something about going to Tofty to see somebody and talk to somebody over there. A. Yes, but not that evening.

Q. That was the next day, was it? A. Yes.

Q. Mr. Richards went with you?

A. We went to Tofty together.

Q. Didn't he advise you to look into the thing and see whether it was a good thing?

A. We were looking for information.

Q. Didn't you say that you would? Didn't he ask you if you would like to go down there and buy in there with Boulton? [67]

A. He asked me if I wouldn't like to go down.

Q. Yes. Didn't he ask you something like that?

A. Yes. Something to that effect.

Q. Didn't you say, "What is the use of me talking? I have not got any money."

A. Those are the words.

Q. Didn't he then say he would stake you to the money, if you wanted to go, but to investigate the thing before you started; to look into the lay?

A. I can't recollect his words.

Q. That was the meaning of it?

A. He gave me the money.

Q. He said he would stake you to the money, if you wanted to go down and buy in there with Boulton?

(Testimony of Edward Williams.)

A. I don't remember his remarks when he gave me the money.

Q. This is about the substance of what he told you before he gave you the money; that if you wanted to go and put in there with Boulton, he would stake you to the money?

A. He didn't say about staking me to the money I couldn't admit that.

Q. What words did he use before giving you the money? A. Before giving me the money?

Q. He wanted you, before you started at all, before he let you have the money, he wanted you to make some investigations there, didn't he?

A. I told him about this Merrifield, and he said we would go down and I could find out what I could from him.

Q. How far did you have to go?

A. About a mile and a quarter.

Q. Was that the next day that you saw this Merrifield? A. The next evening. [68]

Q. You talked to Merrifield, did you?

A. Yes. I called on him.

Q. Richards didn't talk to him at all, did he?

A. No.

Q. Did you talk to anybody else about the Flat Creek country and Boulton and his lay at Tofty?

A. No, not at Tofty.

Q. What time did you and Richards start back to his place on Cache Creek from Tofty? .

A. I couldn't say the exact time. In the evening

Q. What time did you get back home?

(Testimony of Edward Williams.)

A. I don't remember.

Q. You went to bed and slept that night?

A. I suppose so.

Q. Where did you go the next day, do you remember?

A. I think Mr. Richards went to Hot Springs.

Q. You think he went to Hot Springs. After you got back from Tofty, did he hand you any money or give you any check?

A. He gave me the check for \$2,300.00, and \$200.00 in currency.

Q. That was the next day after you got back from Tofty after you talked with Merrifield—isn't that true?

A. Yes, Mr. Richards and I went to Tofty.

Q. You say the next day after you made that trip to Tofty, he gave you this \$200.00 in currency and the \$2,300.00 check?

A. I wouldn't be positive about the day or two after. The only thing is, I know he gave me the money.

Q. One or two days after. He did that upon your representation that you had written to Boulton, you had talked to the man that came up from there that knew about Boulton's lay, and you wanted to go down there and thought when you got [69] down there, if you could buy in with him you could make some money. Were not those the reasons that Mr. Richards gave you for handing you the money?

A. I didn't quite understand you, the way you put that question.

(Testimony of Edward Williams.)

Q. I say, hadn't you told Mr. Richards about what Boulton had written you, about the information you had got from people in talking to them; that you thought Boulton had a good piece of property down there; that he wanted to sell you an interest, and you wanted to go down and buy in there? Was not that the conversation, and that the reason that led Mr. Richards here to hand you that \$200.00 in money and the \$2,300.00 check?

A. I don't know as I was enlightening Mr. Richards about that proposition. The information I received from Boulton I received in June, and this transaction was taking place in September. Mr. Richards was as much enlightened about that transaction as I was. He also asked his friend. He phoned to his friend to Hot Springs to look the matter up—to Mr. Thomas Williams.

Q. What is that?

A. Mr. Thomas Williams in June, to look the matter over. And this transaction is taking place in September. The only information I received after that was from Merrifield after we received this telegram. I didn't look up any information at all until after we received that telegram.

Q. Have you got that letter of June from Boulton? You say you told Richards about that, didn't you?

A. Yes.

Q. And he did that on your behalf? He had a phone there in his place? A. Yes.

Q. He could phone down to Hot Springs, couldn't he, without expense? A. Yes. [70]

Q. And he phoned down there and got some in-

(Testimony of Edward Williams.)

formation for you from Williams, didn't he?

A. Information for me?

Q. Yes. A. For me from Williams?

Q. Yes. Who was that man?

Mr. McGOWAN.—Let him answer.

Mr. PRATT.—Q. Who did he phone to at Hot Springs? A. Tom Williams.

Q. He just phoned down there to get some information for you. A. No, sir.

Q. When Williams answered him, didn't he tell you what Williams said?

A. We were telling Mr. Williams the information I had received in this letter, and Mr. Richards wanted him to look the matter over.

Q. Did you ask Richards to phone Williams down there and see what he would say about it, after you got this letter from Boulton?

A. I can't recollect.

Q. You do know that Richards, when he got the information from Tom Williams, told you what it was, didn't he? He told you what Tom Williams said?

A. Mr. Richards I don't think ever got any information from Tom Williams.

Q. He didn't get any from him at all? Is that the way you want to leave it?

A. Mr. Richards was trying to enlighten Tom Williams about the proposition after I told Mr. Richards about it.

Q. Oh. And Tom Williams was going to Iditarod too? A. Yes, sir.

(Testimony of Edward Williams.)

Q. But before Mr. Richards could phone down there and [71] catch Tom Williams, he had left Hot Springs and gone on down to Iditarod.

A. I am not so sure whether he had gone or not.

Q. You don't want to be positive whether Mr. Richards gave you that check up there on Cache Creek—the \$2,300.00 check?

A. You say I am positive?

Q. Do you want to be positive that he gave you that check on Cache Creek? A. Yes, sir.

Q. Don't you know he gave you that check down at the N. C. store in Hot Springs? A. No, sir.

Q. What day did you leave the Hot Springs?

A. I can't recollect the date.

Q. Don't you know it was the 16th?

A. That I left Hot Springs?

Q. Yes. A. That may have been, too.

Q. If the check is dated on the 16th, he must have given it to you down at Hot Springs.

A. The reason that check is dated on the 16th is because Mr. Richards didn't wish me to present that check until he had made some arrangements about some money.

Q. When you got down to Hot Springs, you found Richards there. He had gone ahead of you, had he?

A. Yes, sir.

Q. You say you had some conversation there with him? A. Oh, yes.

Q. About the trip?

A. Yes. We talked the matter over.

Q. You say he told you in the N. C. Company's

(Testimony of Edward Williams.)

store that if things looked very good down there that he might go stronger than he had gone with the \$2,500. A. Yes. He made that remark. [72]

Q. Who was present and heard that?

A. There were several parties present in the store. I don't know who.

Q. Didn't you testify at the second trial that it was Howard Curtis of the N. C. Company?

A. He was in the store. Howard Curtis was in the store.

Q. Didn't you testify at the second trial that Howard Curtis was present and could have heard that if he wanted?

Mr. CLARK.—We object to that as not the proper form of an impeaching question.

The COURT.—Sustained. Ask him in the usual way.

Mr. PRATT.—Q. Was Howard Curtis there present when Richards made that expression?

A. He was in the store.

Q. How close was he to him?

A. That I cannot say.

Q. Was he close enough to have heard it, if he said it?

A. He might have heard it if he had been listening. There were several other persons in the store.

Q. You are satisfied now that he was quite close to him when that conversation took place?

A. I could not state he was close enough to hear it.

, Q. You didn't testify to that at the first trial?

(Testimony of Edward Williams.)

(Objected to as not proper form of impeaching question.)

(Sustained. Defendant excepts.)

Q. Isn't it true that at the first trial you made no mention of a conversation between you and Richards in the N. C. Company's store at Hot Springs, in which Richards said, as you now testify, that if things looked good to you down there he would go stronger?

A. I didn't make that statement in the first trial.
[73]

Q. You didn't? A. No, sir.

Q. When did you first make that statement in these trials? A. At the second trial.

Q. When did you first tell your attorneys that he had made that expression?

(Plaintiff objects as immaterial, nothing to show that he has attorneys. Sustained. Deft. Richards excepts.)

Q. When did you tell McGowan & Clark first about that, that he had said he might go stronger?

A. I can't recollect of ever telling them. I told it in the court at the second trial. I may have told them. I won't admit it. But I told it there.

Q. You certainly did not tell them before the first trial, did you? A. No.

Q. Can you give any reason why you did not testify to that at the first trial?

(Plaintiff objects as improper; nothing to show he was asked concerning it. Sustained. Deft. Richards excepts.)

(Testimony of Edward Williams.)

Q. Mr. Williams, did you have any conversation with Mr. Richards before you left? You left on a boat? A. Yes.

Q. On the evening of the 16th, didn't you?

A. In the morning about 4 o'clock.

Q. And went down to the Iditarod. A. Yes, sir.

Q. Did you have any conversation with Richards at any time after getting this telegram from Boulton, between that and the time you left, that you would go down there and buy a quarter interest or any interest with Boulton and take the assignment of the lease in the name of yourself and Mr. Richards?

A. No, sir.

Q. Did you have any conversation with him, or did you have any verbal contract, or any written contract, that you would go down there and buy into that lease on Flat Creek, and that [74] he and you would mine there as mining copartners during the summer of 1911? A. No, sir.

Q. Was there anything said between you—now, I am talking about down here at Hot Springs and before you left—about any partnership name?

A. No. There was not.

Q. Was there anything said about you going down there and putting that money he had given you in a bank in the name of the partnership of Richards & Williams? A. No, sir.

Q. Was anything said between you about dividing profits and losses of any business down there?

A. No, sir.

Q. Was there anything said between you about

(Testimony of Edward Williams.)

your buying anything at all with that \$2,500.00 other than a quarter interest in the Boulton lease?

A. I can't say we discussed about buying. I was just given the money and sent down there to use my own judgment.

Q. Was there anything said about buying anything else? Was not everything of your talk about buying a quarter interest in the Boulton lease?

A. I don't know much about a quarter. I don't know where that quarter comes in. Mr. Boulton doesn't say anything about a quarter. Didn't know whether it was going to buy a quarter, a half, or the whole. That telegram doesn't say anything about a quarter.

Q. Didn't the letter say something about him giving a half interest, and he wanted to sell half of the half, which would be a quarter?

Mr. CLARK.—We object to that, as there are two letters.

Mr. PRATT.—The letter you got in June, didn't that tell you [75] he had a half interest and wanted to sell half of that half, which would be a quarter?

A. I don't think I acknowledged that. I can't remember.

Q. You can't recollect. A. No, sir.

Q. You remember pretty distinctly the time that you left Hot Springs, didn't you? A. Yes, sir.

Q. Dick Richards was there with you?

A. Not when I left.

Q. You saw him shortly before you left?

A. The night before, before we retired. I left at

(Testimony of Edward Williams.)

4 in the morning.

Q. Did you make this expression to him the last time you saw him there at Hot Springs before you started down the river: "I appreciate your kindness in giving me the money to go, and I will do the right thing in return?"

A. I may have expressed myself that way.

Q. When you got down to Iditarod City, it was called Twilight City, wasn't it then? A. Yes, sir.

Q. When you got down there you had a letter of credit from him on the N. C. Company.

A. Yes, sir.

Q. And you drew the cash, \$2,300.00.

A. Yes, sir.

Q. And you deposited that in the name of Edward Williams, that is, in your name, in the Miners & Merchants' Bank at Iditarod City. A. Yes, sir.

Q. Was Mr. Boulton there to meet you?

A. He was in Twilight when I got there.

Q. Who did you learn his partners were at that time?

A. I didn't learn until I went out to the creek.

Q. Who did you find his partners to be?

A. Shively and Kennedy. [76]

Q. What did you find the relationship between those three men, friendly or otherwise?

A. Well, that I couldn't say. They may not have been getting along very well.

Q. Boulton wanted you to buy an interest of him—a part of his interest—didn't he? A. Yes.

Q. How much did he want to sell to you?

(Testimony of Edward Williams.)

A. A quarter. He sold me a quarter.

Q. He owned a half, didn't he? A. Yes, sir.

Q. Kennedy and Shively owned the other half.

A. Yes, sir.

Q. He wanted you to buy their half too, didn't he?

A. Well, I used my own judgment. I didn't go according to what Jack Boulton told me.

Q. Didn't he ask you and request you to buy those other men out?

A. He considered it a good proposition, and I was looking it over, and I decided to buy it.

Q. Didn't he want you to buy them out so he and you could have charge there and you could get along together and make a go of it?

A. I don't know much about that.

Q. Wasn't that the drift of his talk?

A. No, I couldn't say.

Q. Anyhow, after you got there you concluded to buy Shively and Kennedy's half interest, as well as this quarter interest of Boulton?

A. I bought the half first.

Q. How much did you give Boulton for his quarter interest? A. \$2,000.00. [77]

Q. How much were you to give these other men?

A. \$4,500.00.

Q. You say in one of these letters that when you got to Twilight City you found Jack waiting for you. That is Jack Boulton. Had you notified him that you were coming?

A. No. I can't recollect whether we wired him or wrote him. I think we wired him.

(Testimony of Edward Williams.)

Q. Who wired him?

A. I wired him, I think.

Q. Where from?

A. From Cache Creek.

Q. What did you tell him?

A. I told him I was coming.

Q. Can you tell the contents of that telegram any more than that? A. No, I can't.

Q. Did you tell him you were fetching money with you—two thousand dollars in money?

A. I don't know whether I mentioned two thousand in the telegram or not.

Q. Did you say anything about money?

A. I might have wired him; told him to hold it. Am coming. Something to that effect.

Q. To hold it; that you were coming.

A. Yes, sir.

Q. You met Boulton there, and you went out on Flat Creek. A. Yes, sir.

Q. That is eight or ten miles from Iditarod City?

A. Yes, sir.

Q. How long were you gone?

A. A day or two.

Q. While you were over there you purchased Kennedy and Shively's half interest. A. No. [78]

Q. Or bargained for it?

A. I looked the matter over.

Q. You agreed upon a price with them.

A. They told me the price. I hadn't agreed at the time.

Q. What?

(Testimony of Edward Williams.)

A. I hadn't agreed to make the purchase at all when I was out there.

Q. You hadn't?

A. No, I just looked the matter over.

Q. Had they made a price to you?

A. I think they had.

Q. You, of course, told them that you didn't have the money, and, unless you could borrow it, you couldn't buy. I suppose that is the way it happened, is it not? A. Yes.

Q. In a day or two, you and Boulton and Kennedy and Shively came over to Iditarod City to see if you could get that money, didn't you?

A. I don't think they came in with me for that purpose.

Q. They came in with you, anyway.

A. They came into town.

Q. With you and Boulton.

A. No. They didn't come in the same time.

Q. The same day?

A. It may have been the same day, but we didn't come in together.

Q. Your \$2,300.00 was on deposit in the Miners & Merchants' Bank then. A. Yes, sir.

Q. What did you do when you came to town with reference to raising the money to buy this half interest of Kennedy [79] and Shively?

A. Well, I first took my money—I presented my letter of credit at the N. C. and got my money and took it to the Miners & Merchants' Bank. I was

(Testimony of Edward Williams.)

talking the matter over there with Mr. Linderbloom—

Q. How did you deposit it there?

A. In my name.

Q. In your own name. A. Yes, sir.

A. I talked the matter over with him, and he told me that he would advance me dollar for dollar. If I deposited \$2,000.00 he would give me \$4,000.00; if I deposited \$5,000.00 he would give me \$10,000.

Q. You tried to make a loan there then.

A. He told me he would have to consider the matter first.

Q. You didn't name Richards in it at that time at that bank? A. No, sir.

Q. You didn't mention his name at all.

A. Not at that time.

Q. At that bank.

A. I may have told him that Mr. Richards was my partner.

Q. Are you sure you did?

A. I would not be certain.

Q. Anyhow, the loan that you were going to get from the Miners & Merchants' Bank were going to get on your own responsibility from that bank, were you not? A. I don't know.

Q. What? A. I don't know.

Q. Don't you remember now that that was what you were talking about; that you were talking with that bank on the theory that you were going to borrow the money yourself from them [80] if you could? A. I couldn't say as to that.

(Testimony of Edward Williams.)

Q. You were not going to borrow it on the strength of Richards & Williams, were you?

A. I don't know.

Q. Did you say anything about borrowing—(interrupted).

A. No, not at the time. I just told him Mr. Richards was my partner.

Q. You now feel sure that you told him Mr. Richards was your partner at the Miners & Merchants' Bank. A. No. I am not so certain of that.

Q. What? A. I can't recollect.

Q. But you do recollect that you didn't propose to borrow the money from the Miners & Merchants' Bank in the name of Richards & Williams. You do know that, don't you?

(Objected to. Question withdrawn.)

Q. You didn't offer to do anything like that, did you?

A. No, I hadn't transacted any business. It hadn't come down to a business point. We just talked the matter over.

Q. You talked the matter over with the Miners & Merchants' Bank until you concluded you couldn't get any loan there, then you quit them and went to the American Bank of Alaska.

A. It didn't come to the question where I couldn't get a loan.

Q. You didn't get a loan there, did you?

A. No, sir.

Q. You tried to get a loan there?

A. I spoke to Mr. Linderbloom about it.

(Testimony of Edward Williams.)

Q. You were trying to get that loan by your own name, were you not? A. I cannot admit it.

Q. You will not deny it, will you?

A. I can't admit it. [81]

Q. But you do know that you didn't offer to that bank that you would give a paper signed Richards & Williams, if they had let you have the money. You know you didn't do that?

A. I didn't do it, no. We didn't discuss that.

Q. You didn't offer to do that.

A. We didn't discuss that.

Q. You didn't discuss it with the Miners & Merchants' Bank from that standpoint, did you?

A. No. I didn't.

Q. When you failed there, what did you do?

(Objected to. Question withdrawn.)

Q. When you failed to get the loan, what did you do?

(Objected to. Sustained.)

Q. When you got through there at the Miners & Merchants' Bank and didn't make the loan and didn't get the money there, what did you do?

A. I went into Morgan's one day and I was talking the matter over with him and told him how I was situated, and I told him, just as I tell the Court now—

Mr. PRATT.—Q. What—

Mr. McGOWAN.—Let him finish his answer.

Mr. PRATT.—I didn't ask him for any conversation.

The COURT.—Have you finished your answer?

(Testimony of Edward Williams.)

A. No. After I left the bank, I went to Morgan & Litsey's. And I knew Morgan. I know him from Dome Creek, and he knows Mr. Richards. And I was telling him my situation and how I was fixed, and told him I had no power of attorney from Richards, but I would like to make a loan. And I told I also considered that Mr. Richards was my partner in the transaction. And he said, "Do you know Mr. Hurley?" I said [82] "No." He took me around and gave me an introduction to Mr. Hurley, and I told Hurley the conditions, and Mr. Hurley said, "I will think the matter over."

Mr. PRATT.—Q. Told him you had no power of attorney.

A. Who?

Q. Mr. Hurley? A. Yes.

Q. And Mr. Hurley said, "Well, it ain't business to let you sign these papers this way, but I will take a chance on you anyway."

A. Not at that time.

(Objected to, as assuming something not testified to.)

Q. Didn't Hurley say that when you told him that you didn't have any power of attorney?

A. That remark wasn't passed at that time at all.

Q. Was it made afterwards?

A. A remark similiar to that was made sometime afterwards.

Q. When? A. I can't just recollect.

Q. When do you say it was? You say it is similar. When was it?

(Testimony of Edward Williams.)

A. Something like that; that he would take a chance with me; take a chance on me or with me. I can't recollect just what he did say.

Q. Wasn't it to the effect that to let you sign Richards' name purporting to have his power of attorney when he knew you didn't have it, wasn't business with him?

A. That was three months after that transaction.

Q. Wasn't that the purport and meaning of it—that it was not business for him to allow you to sign up that way?

Mr. McGOWAN.—That was in reference to the mortgage, three months later. [83]

The COURT.—Answer the question.

Mr. PRATT.—Wasn't that the purport of it?

A. You can make that meaning out of it.

Q. Is not that the way you understood it?

A. Yes.

Q. Now, you say when you took the money over there to his bank you were going to deposit it there in the name of Edward Williams, were you not?

A. That I cannot say. I cannot say for sure.

Q. You cannot say? A. Not for sure.

Q. Is not that your best recollection—that that is what you intended to do when you took it over there?

A. I cannot say for sure.

Q. Have not you testified that the reason you did not was the suggestion of Mr. Hurley that you ought to put it in the name of both so that if anything happened to you, if you would die or anything, Richards could draw the money?

(Testimony of Edward Williams.)

A. Yes. Mr. Hurley made that suggestion.

Q. That is what caused you to put it in the name of Richards & Williams. A. I cannot say for sure.

Q. Is not that your best judgment now, and recollection, that that is what caused you to do it?

A. I cannot say.

Q. Mr. Williams, didn't you write this in your letter in regard to that matter—the letter of October 24, 1910, to Richards: "He," speaking of Hurley, "told me in case anything should happen, unless I deposited it in yours and my name you would have some trouble getting it, so I did as he advised, and signed the checks 'Richards & Williams' "?

A. Yes, I gave that as evidence, I think. [84]

Q. That is how that happened, wasn't it?

A. Yes.

Q. Now, you borrowed \$3,500.00 there, didn't you?

A. Yes, sir.

Q. And you signed these notes that have been introduced in evidence? A. Yes, sir.

Q. You borrowed that \$3,500.00 to pay for the half interest of Shively and Kennedy, didn't you?

A. Well, to help pay for it.

Q. You didn't have money enough without that loan to do that, did you? A. No, sir.

Q. You didn't pay Kennedy & Shively all of their \$4,500.00 purchased price in money, did you?

A. No, sir.

Q. You gave checks to people that they owed, didn't you? A. Yes, sir.

Q. You remember the checks that have been talked

(Testimony of Edward Williams.)

about here,—some of them? A. Yes, sir.

Q. You also gave one of those men—Kennedy—a note for a part of his interest? A. Yes, sir.

Q. In what amount?

A. Eight hundred and some odd dollars.

Q. Whose name did you sign to that note?

A. My own name.

Q. You didn't sign Richards' at all, did you?

A. No, sir.

Q. Why didn't you?

A. Well, I don't know hardly why I didn't. I didn't do it.

Q. You could get through with Kennedy and do business with Kennedy without it. He didn't lay down on you and make you do it.

A. No. He never asked it of me. [85]

Q. You couldn't have got the money of Hurley except by signing the firm name, could you?

A. I don't know.

Q. Did you try to get the money there on your own name? A. No, sir, not from Hurley.

Q. You knew then that Hurley knew Dick Richards, didn't you? A. Yes, sir.

Q. When you failed to get it at the Miners & Merchants' Bank and went over to Hurley, didn't you go there and tell him at once that Dick Richards was your partner?

Mr. McGOWAN.—We object to; "because he failed to get it at the Miners & Merchants' Bank."
(Sustained. Deft. excepts.)

Mr. PRATT.—Q. When you got through negoti-

(Testimony of Edward Williams.)

ating with the Miners & Merchants' Bank, isn't it true that you went to Hurley and told him that Dick Richards was your partner?

A. I did. I told him that he was my partner.

Q. That you wanted to borrow \$3,500.00 and if he would let you have it you would sign up a firm name?

A. I told him I would sign up a firm name?

Q. Yes.

A. No. I don't think I used that language.

Q. Didn't you tell him you would sign Dick's name to the paper?

A. I made that deposit there, and all the checks I issued I issued them in that name.

Q. Didn't you tell him that for this \$3,500.00 loan you would sign a note in the name of Richards & Williams? A. Told him I would do that?

Q. Yes. Didn't you tell him you would do that, before he made the loan and before you got the money? A. Yes [86]

Q. You bought the boiler sometime afterwards?

A. Yes.

Q. Who did you buy that of? A. Tom Aitken.

Q. For how much?

A. \$2,100. I think it is \$2,100.

Q. When did that happen?

A. That was shortly after I had made the purchase down there.

Q. \$2,100, was it, *that were* to give?

A. \$2,100 or \$2,200 for a 40 horse-power boiler.

Q. How much did you pay on that?

A. I paid \$700 cash.

(Testimony of Edward Williams.)

Q. That was out of this Richards money, wasn't it, or the money you borrowed?

A. From the bank account.

Q. What?

A. From the account I had in the bank.

Q. What did you do about the balance—the \$1,400.00, how did you arrange that?

A. Gave him a note, I think.

Q. Gave Tom Aitken a note?

A. I think so.

Q. For \$1,400.00? Who signed that note?

A. I did.

Q. Did Richards sign it? A. No, sir.

Q. He didn't have anything to do with it?

A. No, sir.

Q. Did you sign up any other notes down there after you bought in this three-quarters interest, half from Kennedy and Shively and a quarter from Boulton? Did you sign any more notes than the one to Kennedy and one to Aitken? Did you sign any more notes? A. I can't recollect. [87]

Q. You might have signed some more, might not you? A. I can't tell.

Q. Did you ever sign any other down there with Richards' name on it, except this one to the bank?

A. Not outside of the checks that I would issue on that account; not to my recollection.

Q. I am talking about promissory notes. Did you ever sign any promissory notes or contracts down there in the name of Richards & Williams, or put

(Testimony of Edward Williams.)

Richards' name onto such a paper at all, other than checks? A. Not that I can recollect.

Q. None except this one, and the mortgage to the bank? A. To the best of my recollection.

Mr. McGOWAN.—Do you include deeds in that? You said contracts.

Mr. PRATT.—Q. After you got this money, you closed up this deal, didn't you, with Kennedy and Shively? A. Yes, sir.

Q. And got rid of them? A. Yes, sir.

Q. And you took a bill of sale of their half interest? A. Yes, sir.

Q. And you took that in the name of Richards and Williams? A. The three-quarters.

Q. Had you discussed that with Richards in Hot Springs, that you were going to do such a thing as that? A. No, sir.

Q. You notified him, however, that you had done that, in your letter of October 24, 1910, didn't you?

A. Yes, sir.

Q. And you got a letter right back, that has been read here, dated December 8th, didn't you?

A. Yes, sir. [88]

Q. There is another letter that has been introduced in evidence and read, dated December 27th, in which he complains of fellows running after him for money. It speaks about Patton? A. Yes, sir.

Q. Doesn't that refer to a letter dated December 16th that Mr. Richards had written to you, and that you got in the Iditarod shortly after you got this one of December 8th?

(Testimony of Edward Williams.)

A. That I received a letter dated December 16th?

Q. Yes. In which he complained of you about leaving some debts there connected with that lease; that is, that Patton and Renza were after him about it, and he was grumbling about it?

Mr. CLARK.—We object, as there is no evidence of anything of that kind.

Mr. PRATT.—I cannot explain that letter of December 27th without some light being thrown upon it. There is a reference to another matter there.

The COURT.—Let the witness testify about it.

Mr. PRATT.—I asked him if he didn't get a letter dated December 16th, or about that, 1910.

A. I may have had those letters, but I can't recollect the dates.

Q. In which he made some reference to, and grumbled about, a man by the name of Patton and a man by the name of Renza coming after him for some of your mining debts in Hot Springs?

A. Yes, sir, he wrote a letter to that effect.

Q. Mr. Williams, isn't this true: That in that letter of December 16th, 1910, Mr. Richards used to you language in substance this: "I will not be responsible for any notes or whatever else you have signed my name to. Let me know as soon as possible if you have revoked the same"?

Mr. CLARK.—We object. There is no evidence that there was [89] any letter of that date, or that he received a letter of that date, and it is incompetent.

Mr. PRATT—Q. Didn't you acknowledge that

(Testimony of Edward Williams.)

you received a letter from him dated about December 16th?

A. I said I received other letters from Mr. Richards, but I don't remember the exact dates.

Q. Don't you know you received one dated shortly after this letter of December 8th?

A. No, I don't, for a fact.

Q. Didn't you receive one in which he referred—that is the way I identify it—in which he referred to Patten and Renza? You remember that. Didn't that same letter contain this language: "I will not be responsible for notes or whatever else you have signed my name to. Let me know as soon as possible if you have revoked the same."

A. There was a letter with that sentence in. That is the Patten, not Renza.

Q. But this that I have read; that he would not be responsible.

A. There may have been something in it to that effect, but I wouldn't swear that that was identically what Mr. Richards wrote.

Q. Wasn't that the substance and meaning of what he put in that letter, the same letter that he referred to Patten and Renza?

Mr. CLARK.—We object as immaterial.

The COURT.—The witness can testify to his recollection about it.

A. I can't recollect receiving a letter written in that tone, with that sentence in it.

Mr. PRATT.—Q. Haven't you already testified

(Testimony of Edward Williams.)

that it was that substance and meaning in that same letter?

Mr. CLARK.—We object as that is for the jury to pass upon. [90]

The COURT.—Objection sustained.

Mr. PRATT.—Q. Wasn't that the substance and meaning—

The COURT.—The objection was sustained to that question.

Mr. PRATT.—Q. What, if anything, did he say in that particular letter about not being responsible for notes or anything that you had signed?

A. I can't recollect.

Q. Did he say anything?

A. I can't recollect of him saying anything about not being responsible, or to have them revoked, to the best of my knowledge.

Q. You will not deny that he used this very language I have read, in that same letter, will you: "I will not be responsible for any notes or whatever else you have signed my name to. Let me know as soon as possible if you have revoked the same"?

A. I cannot admit it.

Q. You will not deny that he used language similar to that?

A. I admit he used language—the chances—I admit there might have been a sentence in it to that effect, but I do not know that those were the words that Richards wrote to me and that I received.

Q. All right. We will let it go at that. You got three letters from him dated in December, on this

(Testimony of Edward Williams.)

same subject, did you not?

A. I do not know the exact dates of the letters.

Q. There are two right here that you produced here; one of date December 8th and one on the 27th, and you say you got one dated between that, along about the 16th?

Mr. CLARK.—He has not. (Objection sustained.)

Mr. PRATT.—Q. That is three letters, is it not?
[91]

A. I admit that I have had letters, but in reference to the dates—I admit I got other letters from Richards, than what has been produced, but in reference to the dates I don't know. I can't recollect the dates of those letters.

Q. In all three of those letters that you got from Richards, he denied that you had any right to sign his name to notes or mortgages, either one, didn't he?

Mr. CLARK.—We object, as the letters speak for themselves.

The COURT.—Objection sustained.

Mr. PRATT.—Q. Mr. Williams, when you were there talking with Mr. Hurley about borrowing this money and making this note, didn't he tell you that he wanted you to write to Mr. Richards and tell him about it, that is, that you had signed his name, and see if he was satisfied?

A. I think I told Mr. Hurley myself. Mr. Hurley may have suggested it, but I think I told him myself that I would write myself and tell Mr. Richards what I had done.

Q. Did he ask you also, when you got a reply from

(Testimony of Edward Williams.)

Richards to let him know what it was?

A. I told him I would let him know.

Q. Didn't he ask you to do that?

A. I couldn't say as to that.

Q. Is not that your best recollection; that he did request you to do that?

A. I couldn't say, to be positive about it.

Q. He might have suggested that to you, that he would like to have you convey the contents of Richards' letter to him? A. He may have suggested it.

Q. When did you get Richards' letter?

A. I don't know the exact date when I got that.

Q. What month? [92]

A. I got the first one—it was brought down by Johnny Johanson, if I recollect right. He brought me a letter.

Q. Did you get any of them before that note fell due on the 6th of January?

A. Yes. I think I did.

Q. You think you did?

A. Yes. I wouldn't be absolutely certain.

Q. You got some after it fell due, didn't you?

A. Yes. I had several letters from Mr. Richards.

Q. It fell due on the 6th of January, 1911?

A. That is supposed to be the date, I think.

Q. You gave this note in suit here—the last note—February 24, 1911, didn't you? A. Yes, sir.

Q. That is going on two months after, isn't it?

A. Yes, two months.

Q. Did you have any conversation with Hurley in the meantime?

(Testimony of Edward Williams.)

A. I think I went into the bank one day and told him I had not got the money and Mr. Richards said he would not do any more at present.

Q. When did you go into the bank and tell him that? A. Sometime after the note was due.

Q. About how long, as near as you can remember?

A. I can't recollect just how long.

Q. It was very shortly after it became due?

A. It may have been.

Q. Did you tell him anything else that Richards had informed you in the letter?

A. Not to my recollection.

Q. Did you tell him that Richards had written to you in one letter and said that he would not be responsible for any notes or whatever else you had signed his name to and, [93] if you had signed any, to revoke them?

A. I don't think I ever made that assertion to Mr. Hurley.

Q. You didn't tell him that?

A. Not to my knowledge.

Q. But you told him Richards was dissatisfied with you for using his name.

A. I don't know as I told him about using the same. I told him he said he would not do any more at present.

Q. Answer me a question straight. Didn't you tell him in substance that Richards was dissatisfied and denied your right to sign his name?

A. No. I didn't tell Mr. Hurley that.

Q. Or anything like that?

(Testimony of Edward Williams.)

A. I may have said something—

Q. You may have said something like that?

A. Not in that way.

Q. What way would it be in?

Mr. McGOWAN.—I object to that as not cross-examination and incompetent, and already answered.

Mr. PRATT.—Q. How many conversations would you say you had with Mr. Hurley after that note became due, until you gave this note that is in suit here?

(Objected to as not cross-examination, irrelevant and immaterial. Objection overruled.)

A. I can't recollect.

Q. More than one?

A. No, I don't think so. Not up to the time—

Q. You don't think so?

A. Not until the time I performed the other transaction; carried out the other business.

Q. Mr. Hurley was either talking to you or sent you word that [94] you had to do something with this debt of \$3,500.00, didn't he, after it became due? A. Oh, yes. I was informed.

Q. How were you informed; by a letter?

A. No.

Q. How were you informed?

A. I had to make a change when Richards didn't want to go into it—didn't want to stay in the transaction, and I told Mr. Hurley that under the conditions I would have to get some other partner in.

Q. When did you tell Hurley that?

A. Sometime in February, I suppose.

(Testimony of Edward Williams.)

Q. What did Hurley say to that?

A. Oh, I don't remember just what Mr. Hurley said.

Q. He was willing for you to do that?

A. He had a mortgage on the ground at the time, and expected to have a mortgage—(interrupted).

Q. Didn't he tell you that he was willing to release Richards if you would give a new note and give a mortgage on that lay over there on that Flat Creek property?

A. I understood that when I got the bill of sale from Mr. Richards that there was to be another transaction take place and that would release Mr. Richards of all obligations.

Q. Hurley wanted you to send down there and have Richards to deed to you so that you would have the full legal title to that three-quarters interest?

A. I can't say that Mr. Hurley asked me to do that.

Q. You and Hurley agreed that you were to do that? A. Not necessarily, but me.

Q. You told Hurley you would do that?

A. I told him I would. [95]

Q. When? A. It was some time in February.

Q. Did you send a form of a bill of sale and transfer up here to Hot Springs for Richards to sign, conveying his interest in that three-quarters interest in that lay back to you? A. Yes, sir.

Q. That was before this note in suit was signed at all, wasn't it, before the 24th of February?

A. I can't recollect whether it was before, or just about the same time.

(Testimony of Edward Williams.)

Q. You told Hurley that Richards wouldn't have anything to do with it; that you had to get somebody else in there with you?

Mr. CLARK.—We object, as he didn't make any such statement.

(Objection sustained.)

Mr. PRATT.—Q. Did you make any arrangement with anybody else to buy an interest there, and, if so, who?

A. To buy an interest in that ground?

Q. Yes. A. I was making arrangements.

Q. Who with? A. McKenzie and McLarren.

Q. When?

A. Some time about the 20th of February, somewhere along there.

Q. This note in suit was on the 24th. Was it before that?

A. I don't know when the note was given.

Q. Did you notify Mr. Hurley of the negotiations with McKenzie & McLellan?

A. I think I mentioned it to Mr. Hurley.

Q. He asked you to do that, didn't he?

A. I can't say that.

Q. He agreed on that then, that you might give a new note, but he wanted a mortgage on that Flat Creek property?

A. They wanted a mortgage. [96]

Q. They wanted you to send to Richards and get a conveyance back that would make the title clear as to you. Hurley wanted you to do that?

A. That is what it would mean, because I don't

(Testimony of Edward Williams.)

think Hurley suggested it, though. I took that matter upon myself.

Q. When you suggested that matter to him, he was satisfied; he wanted it that way?

A. Certainly. He took the mortgage. I gave him the mortgage.

Q. Didn't Hurley agree with you that if you would give a new note and a mortgage, and get Dick Richards to make a conveyance to you, that he would release Richards?

A. Well, I understood that. That was my—(interrupted).

Q. That was before this note of February 24th was signed that all that happened, wasn't it?

The COURT.—What do you refer to?

Mr. PRATT.—His talk with Hurley.

A. I talked the transaction over with Mr. Hurley.

Q. Before this note that is in suit, of February 24th, was signed up?

A. I couldn't state positively.

Q. I want to show you a certified copy of a mortgage, and I will ask you to examine it and see if that is the mortgage you gave at that time. (Hands same to witness.) A. I can't identify that.

Mr. PRATT.—I want to read this as a part of his cross-examination.

Mr. McGOWAN.—We admit that is a copy of the mortgage. Do you (to Mr. Pratt) offer it in evidence?

Mr. PRATT.—Yes, I do, as a part of his cross-examination.

(Marked as Defendant's Exhibit 1, and read in evidence, being in the words and figures following, to wit:) [97]

**Defendant's Exhibit 1 [Certified Copy of Mortgage,
Dated February 24, 1911, Edward Williams et al.
to American Bank of Alaska].**

CERTIFIED COPY OF MORTGAGE.

EDWARD WILLIAMS

EDWIN RICHARDS

to

AMERICAN BANK OF ALASKA.

#6589.

THIS INDENTURE made and entered into this Twenty-fourth day of February, nineteen hundred and eleven, by and between EDWARD WILLIAMS and EDWIN RICHARDS, parties of the first part, and the AMERICAN BANK OF ALASKA, a corporation, of the Town of Iditarod, Alaska, party of the second part.

WITNESSETH: That the said first parties for and in consideration of the sum of Thirty-five Hundred Dollars (\$3500) gold coin of the United States to them in hand paid the receipt whereof is hereby acknowledged, do, by these presents, grant, bargain, sell, convey and quitclaim unto the said party of the second part, and to its successors and assigns, the entire joint and several interests of the said first parties in the following described premises, to-wit: The lay or lease on the lower five hundred (500) feet of the WILDCAT Association Placer mining claim, on Flat Creek, a tributary of Otter Creek in Otter Recording District, Territory of Alaska, known as the

“Bolton” lay. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining.

This conveyance is intended as a mortgage to secure the payment of the sum of Thirty-five hundred dollars (\$3500) gold coin of the United States, on or before July First, nineteen hundred and eleven, together with interest thereon in like gold coin at the rate of twelve per cent per annum payable annually, from the date hereof until paid, according to the terms [98] and conditions of one promissory note bearing even date herewith, made by the said first parties payable to the order of the said second party; and these presents shall be void if such payment be made according to the terms and conditions thereof. But in case default be made in the payment of the principal or in the interest of said promissory note, or any part thereof, when the same shall become due and payable according to the terms and conditions thereof, then the said second party, its successors and assigns are hereby empowered to sell the said premises, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law, and out of the money arising from such sale, to retain the whole of said principal and interest, together with the costs and charges of making such sale, and the overplus, if any there be, shall be paid by the party making such sale on demand, to the said first parties, their heirs or assigns. Said promissory note is in words and figures following, to wit:

Iditarod, Alaska, Feb. 24, 1911.

\$3500.

On or before July 1, 1911, after date, I promise to

pay to the order of American Bank of Alaska, at its office in Iditarod, Alaska, Thirty-five Hundred Dollars, for value received, with interest after date at the rate of Twelve per cent per annum until paid. Principal and interest payable only in U. S. Gold Coin of the present standard of weight and fineness. For value received, each and every party signing or endorsing this note hereby waives presentment, demand protest and notice of non-payment thereof, binds himself thereon as principal not as surety, and promises, in case suit is instituted to collect the same or any portion thereof, to pay such additional sums as the court may adjudge reasonable as attorney's fees in such suit.

(Signed) EDWARD WILLIAMS. (Seal)

EDWIN RICHARDS. (Seal)

By EDWARD WILLIAMS,

His Attorney in Fact.

RICHARDS & WILLIAMS,

By EDWARD WILLIAMS.

IN WITNESS WHEREOF the said first parties have hereunto set their hands and seals this the day and year first above written.

EDWARD WILLIAMS. (L. S.)

EDWIN RICHARDS. (L. S.)

By EDWARD WILLIAMS,

His Attorney in Fact.

Executed in presence of

GREG STEWART,

GEO. W ALBRECHT,

Who subscribe as witnesses to both signatures.

United States of America,
Territory of Alaska,—ss.

On this Twenty-fifth day of Feb., 1911, before me, Geo. W. Albrecht, a Notary Public in and for the Territory of Alaska, personally appeared Edward Williams, to me known to be the individual described in and who executed the within mortgage and acknowledged [99] the execution thereof; also appeared the said Edward Williams and acknowledged that he signed the name of Edwin Richards as principal and his own name as attorney in fact and that he executed the within mortgage.

[Seal] GEO. W. ALBRECHT,
Notary Public in and for the Territory of Alaska,
Resident at Iditarod.

Filed for record at the request of C. J. Hurley at
30 min. past 3 P. M on the 26th day of February,
1911.

ALFRED E. MALTBY,
Recorder. [100]

CERTIFICATE

United States of America,
District of Alaska,
Division No. 4,
Otter Precinct,—ss.

I, Geo. W. Albrecht, Commissioner and Recorder for Otter Precinct, 4th Division, Territory of Alaska, hereby certify that the foregoing and hereto attached three pages of typewritten matter, numbered from 1 to 3, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of instrument No.

(Testimony of Edward Williams.)

6589, a mortgage from Edward Williams and Edwin Richards to American Bank of Alaska, as the same appears of record in my office in Volume "C" of Mortgages, page 171; that I have carefully searched all the indexes and all the books of record containing records of mortgages and that the foregoing is the only mortgage which I find of record in 1911 or later which is made by Jack Boulton, Edward Williams, McKenzie and McLaren, or any of them, running to the American Bank of Alaska, or to anyone else in the amount of \$3,500.00.

IN WITNESS WHEREOF I have hereunto set my hand and seal of office this 24th day of July, A. D. 1913.

GEO. W. ALBRECHT,
Commission and Ex-officio Recorder Otter Precinct,
Territory of Alaska, 4th Division.

[Indorsed]: #1815. Defts. Ex. 1. Third Trial. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 25, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [101]

Mr. PRATT.—Q. Where did you mine that summer of 1911? A. On Flat Creek.

Q. On this same ground? A. Yes, sir.

Q. Who were your partners?

A. McKenzie, McLarren and Boulton.

Q. Did you mine pretty extensively there all summer? A. Yes, for a time; not all summer.

Q. That proved to be disastrous? A. Yes, sir.

Q. Did you pay some on this debt, or any?

A. I paid \$1,000.

Q. To this bank? A. Yes, sir.

(Testimony of Edward Williams.)

Q. Were they after you for the balance of it during the summer? It came due on the first, didn't it? On the 1st of July? A. Yes, sir.

Q. Were not they pressing you for payment after that? A. No, not in particular.

Q. Your lay looked good until pretty late in the season, didn't it?

A. Until the latter part of August or middle of August.

Q. Up to that time the cleanups were pretty satisfactory? A. They were fair.

Q. What did it go to the foot?

Mr. McGOWAN.—We object as immaterial.

A. I could hardly tell you.

The COURT.—What is the purpose?

Mr. PRATT.—I want to show that Mr. Hurley was posted on that ground and depending on this mortgage to release Mr. Richards altogether.

Mr. CLARK.—That is not the way to show it.

The COURT.—I do not think that is cross-examination. Objection sustained.

(Deft. Richards excepts.) [102]

Mr. PRATT.—Q. When did you close down and quit there? A. About the first of September.

Q. And you came off up here? A. Yes.

Q. You got the telegram that was introduced in evidence, asking you to go and buy some ground from Curran, from Richards? A. Yes, sir.

Q. That was a piece of ground over here on Dome Creek? A. Yes, sir.

Q. Curran, the owner of it, happened to be down there? A. Yes, sir.

(Testimony of Edward Williams.)

Q. And Dick Richards wanted to buy it for himself or somebody else. Who did he want to buy it for?

A. I judge from the telegram, for himself.

Q. Anyway, you transacted that business for him?

A. Yes, sir.

Q. That was all there was to that?

A. Yes, sir.

Q. Were you visited by some agent of the bank out there on Flat Creek before you left? A. Yes, sir.

Q. What was his name? A. Adams.

Q. Do you know his first name? A. No, sir.

Q. What was he, the gold-dust collector?

A. He was, in the early part of the season. He had charge—I don't know whether he had charge, but he was in the bank at Flat City.

Q. The branch of the American Bank of Alaska at Flat Creek? A. Yes, sir.

Q. He is the man who collected the gold dust for the American Bank of Alaska during that season?

A. He was in the bank. He didn't go around collecting it, I don't think, at that time. [103]

Q. What did he come out there to see you about?

A. I guess he came out to look the matter over.

Q. To look at conditions?

A. I don't know exactly what he came for.

Q. When did he come there?

A. I can't tell you the exact date, or time.

Q. What month, or how long before you closed down?

A. We were closed down when he came out.

Q. At that time, the American Bank of Alaska

(Testimony of Edward Williams.)

knew you had gone broke, didn't they?

A. Well, I guess they did. They pretty near all knew it.

Q. And you hadn't paid that note in full, and you couldn't pay it. Is that right? A. Yes, sir.

Q. They then sent this man Adams out there to see what they could do to stick Dick Richards?

Mr. McGOWAN.—We object.

The COURT.—Sustained.

Mr. PRATT.—Q. What did he come there for? What did he inquire for when he got there?

(Objected to as already gone over.)

Q. What did that man come there at that time for particularly?

Mr. CLARK.—We object as asked and answered.

Mr. PRATT.—He is the agent of this bank, and we want to show what he got. He got something from him, and I know what he got.

Mr. CLARK.—I withdraw the objection.

A. I don't know whether he came for that purpose alone.

Mr. PRATT.—Q. What did he say he came for?

A. Mr. Hurley at one time asked me if I had any correspondence with Richards, if I had had any. I told him I thought I had a letter or two. Mr. Adams came out there at that time, and that is the time he asked me if I had the letters.

Q. How long was it before Adams came after Hurley made this [104] request of you?

A. I cannot say how long.

Q. Shortly before?

A. It couldn't have been very long.

(Testimony of Edward Williams.)

Q. How many letters of Richards' did you give to this man Adams?

A. Two or three. I can't state.

Q. Don't you know that you gave him the two that have been read here in evidence, one dated December 8th and the other dated December 27th?

Mr. McGOWAN.—We object, as he already stated we got those letters from him. (Objection overruled.)

Mr. PRATT.—Answer. Don't you know that you gave him those two letters of Richards; the letters dated December 8th and December 27th?

A. Yes. I gave him some letters.

Q. Those two letters. Now, you had in your possession at that time this letter of December 16th, didn't you, that made the reference to Patten and Renza?

A. No, I can't say for sure whether I had or not.

Q. You didn't give that to Adams, anyway, did you?

A. I don't know if I had it in my possession at that time.

Q. I ask you to consider again. Did you give that letter of December 16th to Adams?

A. I don't know that I gave to Adams any more letters than what has been produced in court.

Q. Then, you admit that you gave him two of Richards' letters? A. Two or three.

Q. I want a straight answer, if you can give it. Did you give Adams that letter of December 16th?

Mr. CLARK.—We object because there is no tes-

(Testimony of Edward Williams.)

timony that there was any letter of December 16th.
[105]

The COURT.—Objection sustained.

Mr. PRATT.—I will put it: Q. Did you give Adams the letter that made reference to Patten and Renza? A. I don't know.

Q. Don't you know that you did not give it to him? A. I didn't give it to him?

Q. Don't you know that you did not?

A. I can't say. I don't know if I had the letter in my possession, at that time.

Q. If you did, you haven't seen it since, have you?

A. No.

Q. When you came up to Hot Springs, didn't you take that letter with you?

A. I can't say. I may have.

Q. Isn't it true that you didn't give it to Adams because it was very much in Richards' favor, strong in his favor?

Mr. McGOWAN.—We object—

A. I don't know whether I had the letter or not.

Mr. McGOWAN.— —as calling for the witness' conclusion. (Objection sustained.)

Mr. PRATT.—Q. That letter of December 16th, or about that date, that referred to Patten and Renza, didn't you withhold it from Adams and carry it back with you up to Hot Springs?

A. I gave those people all the letters I had in my possession, to the best of my knowledge, at that time when they asked me for the correspondence of Mr. Richards.

Q. When you got to Hot Springs, didn't you have

(Testimony of Edward Williams.)

that letter in your possession?

A. I cannot say.

Q. You might have had it?

A. I might have had it, certainly.

Q. Didn't you burn that letter up down here in the Hot Springs? [106]

A. I didn't burn that letter.

Q. Didn't you burn that letter up, of Mr. Richards, up there?

A. I had letters from Mr. Richards when he was outside.

Q. Didn't you burn one particular letter that was favorable to him, down there in Hot Springs after you got back?

A. Not to my knowledge. If I did, I didn't do it intentionally.

Q. I want to call your attention to what you testified once before about that. Did you give this testimony at the second trial: "Q. Didn't you get another letter from him dated about the 16th of December, and didn't you get that in about thirty days, in which he stated this to you: 'I will not be responsible for any notes or whatever else you have signed my name to. Let me know as soon as possible if you have revoked the same?' "

A. What is the question?

Q. Didn't you receive a letter from Mr. Richards dated about the 16th of December, in which he referred particularly about you using his name down there, and said he would not be responsible, using in substance this language—Objection—"I will not be responsible for any notes or whatever else you have

(Testimony of Edward Williams.)

signed my name to. Let me know as soon as possible if you have revoked the same." That is after he got this letter of October 24th.

A. I can't recollect of—Interrupted—I can't recall ever receiving a letter that was written in that tone.

Q. Wasn't it that meaning and substance?

A. There may have been a letter written in the same tone as the one that has been introduced in court.

Q. Wasn't it a great deal stronger and plainer?

A. I won't admit it.

Q. And you don't deny it. A. No, sir.

Q. What became of that letter?

A. I don't know, sir.

Q. In the fall of 1911, isn't it a fact that you concluded [107] (continues reading) that you might get yourself in trouble?

A. Oh, I undoubtedly considered the position I placed myself in.

Mr. McGOWAN.—We object to all this.

Mr. PRATT.—I have some more to read.

The COURT.—Get to it, then.

Mr. PRATT.—(Reading:) "Q. Did you go to Mr. Hurley or plaintiff's attorneys and deliver all the letters you had in your possession that you had ever gotten from Mr. Richards? A. No, sir.

Q. You didn't deliver all of them? Didn't you give them some letters?

A. I gave them no letters.

Q. None of them? A. No, sir.

Q. How did they get them to bring them here in

(Testimony of Edward Williams.)

court? A. Mr. Adams got them from me.

Q. Is that Mr. Adams on Flat Creek in the Iditarod? A. No, sir.

Q. Where was it? A. At Flat Creek.

Q. That was in the fall of 1910?

A. 1910 or 1911.

Q. It was in the fall—”

Mr. CLARK.—We object. (Objection sustained.)

Mr. PRATT.—Further on (reads): “Q. Have you got any of Richards letters in your possession yet? A. I may have one.

Q. Where is it? A. At Hot Springs.

Q. That is the same letter, ain’t it? Did you then speak about that letter? A. No, sir.

Q. You are sure of that? A. Certainly.

Q. Didn’t you destroy that letter of December 16th yourself?

A. Not willingly, if I did.”

Q. Did you so testify at the second trial?

Mr. McGOWAN.—I object to the question on the ground it is not an impeaching question.

The COURT.—The objection is sustained.

Mr. PRATT.—He is trying to deny now that he burned that letter and here he admits it.

Mr. McGOWAN.—That remark is not fair or proper.

The COURT.—That is not a proper remark.
[108]

Mr. PRATT.—Q. I am asking you if that was not your testimony, at the present time.

A. I never admitted that I burned that letter.

(Testimony of Edward Williams.)

Q. I have read your testimony and quoted it accurately.

A. I said, if I did I didn't do it intentionally. It does not say that I did it.

Q. About the time Adams was over there you felt some apprehension that you might be prosecuted criminally for forgery in this connection?

Mr. CLARK.—We object as immaterial and not proper cross-examination. (Argument. Objection withdrawn.)

Mr. PRATT.—Add to that: In connection with making that note and mortgage that is sued on here, or the note, rather.

A. Well, I certainly figured that I placed myself in a delicate position. I have got to admit that, I think I mentioned that in the letter to Mr. Richards after he objected.

Q. You mean by that that you had a little apprehension down on Flat Creek in the fall of 1911 that the bank might prosecute you criminally for signing Richards' name to that note. Is not that true?

A. I don't know whether I thought that or not.

Q. Haven't you said so in some of these letters?

Mr. McGOWAN.—Mr. Pratt knows that is improper.

The COURT.—Certainly that is improper.

Mr. PRATT.—Q. You thought on that subject?

A. I couldn't help but give it a thought.

Q. Did anybody from the bank, so far as you know, suggest it to you? A. No, sir.

(Testimony of Edward Williams.)

Q. Not at any time? A. No, sir.

Q. Not here in Fairbanks? A. No, sir.

Q. None of the attorneys for plaintiff?

A. No, sir.

Q. You and Richards had considerable correspondence about this [109] matter of your signing his name to those notes and that mortgage, and a number of letters you wrote that have not been read to-day?

(Plaintiff objects as not the best evidence. Overruled.)

A. I don't know.

Q. I said, besides the ones that have been read here, didn't you write Richards a number of letters besides the ones that have been introduced in the trial?

A. There has just been one of my letters read at this trial.

Q. One? A. One or two.

Q. Is it not true that at the first trial I was trying to get out of you if it was not true that you wrote Richards a number of letters in the fall of 1910 and during 1911?

A. We had considerable correspondence.

Q. There must have been half a dozen or a dozen?

A. I couldn't say.

Q. What would be your idea; a half a dozen?

A. I have not any idea as to the number.

Q. Don't you know that at the first trial there were five or six of your letters read that were introduced by the plaintiff?

(Testimony of Edward Williams.)

Mr. McGOWAN.—We object to that as not proper cross-examination, and that the records are the best evidence, and that it is not competent. (Objection sustained. Deft. Richards excepts.) We admit that is in the handwriting of Mr. Williams.

Mr. PRATT.—I want to read it to the jury as a part of his cross-examination.

Mr. McGOWAN.—We object as irrelevant, incompetent and immaterial, and not proper cross-examination.

Mr. PRATT.—Here is a letter this man wrote that this plaintiff introduced in evidence twice himself.

The COURT.—If you have anything to show whether it is competent [110] evidence, state it.

Mr. PRATT.—There are two reasons: One, that whenever a party produces a paper in evidence, he vouches for the truth of that, and it can be used always, every time, by the opposition.

The COURT.—If it has something to do with the case.

Mr. PRATT.—Certainly it must have relation having relation to this same transaction, and making expressions there that puts him in an attitude quite different from the letters they have introduced in evidence.

The COURT.—That is not a matter for you to testify concerning. The letter shows what is in it.

Mr. PRATT.—Will the Court read it?

The COURT.—You can put the question in the usual way.

Mr. PRATT.—Q. I will ask you if, in this letter

(Testimony of Edward Williams.)

I hold in my hand, admitted to be in your handwriting, dated April 4, 1911, addressed to "Friend Dick," signed by yourself, if you did not use this language—

Mr. CLARK.—We object, as the instrument is the best evidence.

Mr. PRATT.—I know it ought to be introduced, but I will read the extracts, and we will get that much of it.

Mr. CLARK.—We object as not proper cross-examination.

The COURT.—Mr. Pratt claims some of it is contradictory of some testimony given here.

Mr. PRATT.—Q. I will ask you if you didn't in that letter use this language (reads): "Well Dick I assumed the responsibility of this proposition doing as you advised me to do; consider you out of it. I was compelled to sell half interest to secure the note I gave last fall. In purchasing it last fall I had the bill of sale recorded in yours and my name, but I cannot cancell the note till you send me the bill of [111] sale which you will find enclosed. Then you will be relieved of all obligations in connection with the proposition." Did you write that to Mr. Richards? A. I did.

Mr. CLARK.—We object as not in contradiction of anything he has testified to in the present trial. (Argument.) I object that it is irrelevant, incompetent and immaterial.

Mr. PRATT.—There is another reason why it should be received: they introduced the letter of December 26th, and this letter I offer is in answer to

(Testimony of Edward Williams.)

that letter. And where a letter is introduced, the answer is part of the same transaction.

The COURT.—Not unless it has some bearing on the transaction, and I do not see where the contradiction appears. (Argument.)

Mr. PRATT.—Q. I will ask you if, in that same letter, you did not say this (reads): “Kindly send the enclosed bill of sale so that I can relieve you of all obligations. If you want some security for the money you gave me I can give you the quarter interest which I still hold.”

Mr. CLARK.—I object as not contradicting anything he has testified to to-day, and not cross-examination.

Mr. PRATT.—This says in effect that he owes Richards that money that he got from him, and he is willing to give him security for it if he wants it. We are certainly entitled to that.

Mr. CLARK.—We object as immaterial, not cross-examination, and not contradictory.

The COURT.—Objection sustained.

Mr. PRATT.—We except.

Mr. PRATT.—Q. This letter of June 27, 1911, is that your handwriting? (Hands paper to witness.)

A. Yes, sir.

Q. See if you signed it there?

A. That is my signature. [112]

Mr. PRATT.—(To Mr. McGowan.) You know what that letter is. (Hands same to McGowan.)

Mr. McGOWAN.—We object to that as irrelevant, incompetent, immaterial and not proper cross-examination.

(Testimony of Edward Williams.)

Mr. PRATT.—That whole letter ought to go in. If the Court would read it, it will see that it is not in line with his testimony in some respects; in others it might be.

The COURT.—Anything in it that you claim is contradictory, you know how to put the question.

Mr. PRATT.—Q. I will ask you if it is not true in that letter of yours to Richards of June 27, 1911, you didn't use this language (reads): "The Guggenheims are in camp—they have options on most of Flat Creek. We let them an option for \$33,000. They also take all machinery and wood at cost price and also pay all running expenses if they take it up, which expires August the 1st. They are certainly doing some prospecting. They have in their employment about 150 men sinking holes which demonstrated they intend giving it a good test. Should they take it up I will come direct to the springs and make good." Did you write that?

Mr. McGOWAN.—We object as irrelevant, incompetent and immaterial, not proper cross-examination, and not in any way impeaching or contradicting the testimony of this witness.

The COURT.—What is the purpose of that?

Mr. PRATT.—It contradicts him. (Argument.)

The COURT.—As I understand counsel, this is offered to contradict the witness, and I do not see that it contradicts him, and I do not see that it is proper cross-examination. The objection will be sustained. (Deft. Richards excepts.)

Mr. McGOWAN.—We will withdraw our objec-

tion to that letter of April 4, 1911.

The COURT.—It may be admitted.

(Marked as Defendant's Exhibit 2 which exhibit was read and is in words and figures as follows, to wit:) [113]

**Defendant's Exhibit 2 [Letter, Dated April 4, 1911,
Ed. Williams to "Dick"].**

Flat Creek, Iditarod, April 4, 1911.

Friend Dick:

I would have written before but have been waiting to see how things would materialize. I intended sending a letter with Joe Barker. He promised to call for it but he never came and disappointed me. Well Dick I assumed the responsibility of this proposition doing as you advised me to do; consider you out of it. I was compelled to sell half interest to secure the note I gave last fall. In purchasing it last fall I had the Bill of Sale recorded in yours and my name, but I can not cancell the note till you send me the Bill of Sale, which you will find inclosed. Then you will be relieved of all obligations in connection with the proposition. Angus McKenzie and Angus McLellan are the parties that I sold to. I got \$4500, for the half interest in the lay just enough cash down to pay the back interest on the note \$400., and giving a mortgage till July 1st, 1911. They are to put machinery, wood and lumber. We have between 400 and 500 cords of wood on the ground, 9000 ft. of lumber. It is all four foot wood costing about \$19.00 per cord. The lumber \$150 per thousand. No machinery of any account excepting the boiler as yet and grub you cant hardly afford to buy as it

is so high. I think this is the most expensive camp ever struck in Alaska. You mentioned in *you* of your letters that I never in particular referred to what this ground would go to the foot. If I never mentioned it, it must have been an oversight on my part as I thought I told you. It is impossible to give a correct idea, but I think I would be safe in saying between \$3 and \$4 for a 100 or 74 ft. wide. I don't think it will go any less and it may go more. It is almost impossible to tell by any hole as it is all wet ground and keep running in just as fast as you take it out. But I am quite confident that we will make some money.

How is it going with you Dick. Have you struck anything yet? And how is things looking around the Springs? Is your head giving you trouble yet? How is Bob and Morris and Carl and Louie? Give them all my regards. Tom Williams is still in the Kuskokwim. I have never see him since I came down here. Carl Ramstead as a good piece of ground. He was offered \$4000., 7000 cash, but wants 50,000 ten thousand cash. Frank Hedstrom as a lay on the same Creek, but does not amount to much. The above ground is located on Otter Creek about 2 miles above the mouth of Flat. Kindly send the inclosed Bill of Sale so that I can relieve you of all obligations. If you want some security for the money you gave me I can give you the quarter interest which I still hold. Hoping this will be satisfactory to you, I remain,

Ever your truly,

ED. WILLIAMS,

Iditarod, Alaska.

Shorty Williams *as* pretty fair pay on Quartz Creek in the Kuskokwim.

Part of the Iditarod City was burned today.

[Indorsed]: #1815. Deft's. Ex. 2. Third Trial. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 25, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [114]

Mr. PRATT.—Will you withdraw your objection to this one of June 27, 1911?

Mr. McGOWAN.—Positively we will not.

Mr. PRATT.—I will ask to have this filed and marked for identification.

The COURT.—It may be marked for identification.

(Marked Defendant's Identification No. 3.

Mr. PRATT.—We take an exception to the court refusing to admit this (refers to Deft's. Identification 3) in evidence.

The COURT.—Very well. Letter marked Defendant's Identification No. 3, which letter is in words and figures as follows, to wit: [115]

Defendant's Exhibit 3 [Letter, Dated June 27, 1911, Ed. J. Williams to "Dick"].

Defendant's Identification "3."

Iditarod, Alaska, June 27, 1911.

Friend Dick:

Your kind letter of May the 17th received a few days ago and I assure you I was glad to hear from you and I must thank you for sending me the deed. I was somewhat worried as I feared it had been lost on account of not hearing from you for such a long

time. It was also reported around hear that you had gone outside on account of the accident you meet with last summer, so you can imagine how pleased I was to hear from you and that you were in good health and judging from the tone of you letter, doing fairly well at the mining.

About this proposition—it is looking pretty good but it is very expensive to work. We had a cleanup on June the 22nd—cleaned up 700 oz. The gold is worth 17 50/100 per oz. It goe about 31½ to the foot. We have 45 men working for us. I was doing the cooking, but it was to much for me so I quit it and am now working in the dump box. It is very hard ground to wash. We have three men in the dump box. We dump it on a flat apron and use a three inch pump to wash it into the dump box. The pay is from seven to nine feet in depth and from 16 to 18 ft. to bedrock, which make it rather expensive to work. We are away ahead of any on the creek and our cleanup the begest in the camp yet. Of course none of the bigger plants such as Tom Aitken, Doc Madden and Geo. Friend are doing much yet. They are using the Bagely scraper for stripping but it is not giving very good satisfaction and I think they will discard it before long. The season is very backward in this part of the country—lots of snow on the hills and I think the worst climate in all Alaska. The Guggenheims are in camp—they have options on most of Flat Creek. We let them an option for \$33,000. They also take all machinery and wood at cost price and also pay all running expenses if they take it up, which expires August the 1st.

(Testimony of Edward Williams.)

They are certainly doing some prospecting. They have in there employment about 150 men sinking holes wich demonstrated they intend giving it a good test. Should they take it up I will come direct to the spring and make good. Tom Williams went to the Ruby Creek strike. He didn't find much in the Kuskokwim. Well, Dick, should you see Morrison tell them I will settle just as soon as I possible can. They wrote me a letter stating that Roden was there agent for the Iditarod and that they hoped I could make a payment July the first. But I can't see my way clear to pay it at that date, but will just as soon as I possible can. I must now close hoping that you are enjoying good health and making good. Give my regard to Bob, Carl, Sam and Louise,

I remain,

Yours sincerely,

ED. J. WILLIAMS.

Flat Creek, Wild Cat Asso.

[Indorsed]: #1815. Third Trial. Deft's. Ident.
"3." Mar. 25, 1914. P. R. W. [116]

I stated that I told Mr. Hurley down there, when I was making this note —the first one that Dick Richards was my partner. I can't recollect that I stated to Hurley that I wouldn't sign his name to notes.

Mr. PRATT.—Now, sir, I would ask you to state if you didn't write in your letter to Richards, dated Oct. 12, 1911, and use this language: "The mortgage was \$4500, as you will see by the agreement I paid \$1000.00 leaving \$3500, with interest to be paid, I have no idea what the consequences will be. Any

(Testimony of Edward Williams.)

liberties that I assume in using your name be it legal or illegal, I did it for what I thought best. I will not write any more till I hear from you.” Did you write that in your letter?

A. I did write that. [117]

Mr. PRATT.—Here is a letter dated January 20, 1912, addressed to “Friend Dick,” signed “Sincerely yours, Ed J. Williams.”

Mr. McGOWAN.—We admit he wrote it.

Mr. PRATT.—Q. This is your handwriting?

A. Yes, sir.

Mr. PRATT.—We offer to read this in evidence as a part of his cross-examination. We offer it as a contradiction of his testimony in some respects.

Mr. CLARK.—To which we object as irrelevant, incompetent and immaterial.

Mr. PRATT.—This is a letter that is a modification—(interrupted).

Mr. McGOWAN.—We object to that in the presence of the jury.

The COURT.—Objection sustained.

Mr. PRATT.—We except. Now, then, didn't you state in that letter, in the first paragraph of that letter, as follows (reads): “Friend Dick: Your letter of Dec. 27th received a few days ago, and judging from the tone of it I know how you feel about the matter. I can't deny but what you are justified in looking at it as you do. As for myself I am placed in a rather delicate position and what the result will be I cant say.”

Mr. McGOWAN.—We object as not proper cross-

(Testimony of Edward Williams.)

examination, irrelevant, incompetent and immaterial, not an impeaching question, and not by way of impeaching the testimony of this witness, or tending to.

Mr. PRATT.—It amplifies and explains.

The COURT.—I do not see that that explains anything.

Mr. PRATT.—And modifies a number of his statements.

The COURT.—If you want to cross-examine him in regard to that statement, you may do so.

Mr. PRATT.—Q. I ask you if you made that statement in your letter to Mr. Richards?

A. I wrote him the letter, yes, sir. [118]

Q. The letter of January 20, 1912, that we were just talking about?

A. Where is that dated?

Q. It is not dated from any place. I want that marked. A. I mean the place I wrote it from.

Mr. MARQUAM.—It was written from Hot Springs.

The COURT.—Let the witness see the letter. (Letter handed to witness.)

A. I didn't know whether it was from Hot Springs or from Flat City.

Mr. PRATT.—Q. Where was it written from?

A. That must have been written from Hot Springs.

Mr. PRATT.—I offer this as an exhibit.

Mr. CLARK.—We object to it being filed as an exhibit.

The COURT.—It can be marked for identification, I suppose.

(Testimony of Edward Williams.)

Mr. PRATT.—There is a part of it in evidence.

Mr. McGOWAN.—He admits he made that statement. Why do you want it in evidence?

Mr. MARQUAM.—We have offered to introduce it in evidence, and the Court ruled it out, and we save an exception.

The COURT.—It may be marked for identification.

(Marked Defendant's Identification 5.) [119]

Defendant's Exhibit 5 [Letter, Dated January 20, 1912, Ed. J. Williams to "Dick"].

Defendant's Ident. "5."

Jan. 20th, 1912.

Friend Dick:

Your letter of Dec. 27th received a few days ago, and judging from the tone of it I know how you feel about the matter. I can't deny but what you are justified in looking at it as you do. As for myself I am placed in rather a delicate position and what the result will be I can't say. With reference to any trouble I haven't heard a thing since I came to Hot Springs. When I left Iditarod I saw Mr. Hurley and told him I was going to Fairbanks and that I would explain the situation to you. He also told me he would send a letter to Mr. Brunning.

On my arrival at Sullivan I wrote to the American bank in Iditarod and told them you had gone outside and that I couldn't do anything at present. I have no copy of the note or mortgage. The note was given the same time as the mortgage.

And as for the machinery, Tom Aitkin took it

(Testimony of Edward Williams.)

back. We did not have it all paid for. To be honest about it I am trying to forget it. I was almost crazy thinking of what a mess I had made of the whole transaction. After you had tried to give me a start I have no excuse to offer and whatever the results will be I can't say.

I expect to hear from Iditarod any day and whatever the news is I will let you know.

I can't write to night Dick. Will write in a few days and try to give you full particulars.

Sincerely yours,
(ED. J. WILLIAMS.)

[Indorsed]: #1815. Third Trial. Deft's. Ident.
5. Mar. 25, 1914. P. R. W. [120]

Mr. PRATT.—Q. Mr. Williams, at the second trial, didn't you give testimony to this effect: I asked you the question (reads): "Didn't you get an intimation from some source that you were liable to be prosecuted criminally either for forgery or obtaining money under false pretenses? A. I figured that out myself without being enlightened. Q. You thought there was some chance of that. A. Yes, sir." Did you give that testimony?

Mr. CLARK.—We object as not contradicting him, and absolutely not cross-examination.

The COURT.—Objection sustained. (Defendant excepts.)

Mr. PRATT.—Q. Isn't it true that after you quit down there, and up to the time of the other two trials, you had some fears that you might be prosecuted criminally either for forgery or obtaining money un-

(Testimony of Edward Williams.)

der false pretenses?

Mr. McGOWAN.—I submit that is not cross-examination, irrelevant, incompetent and immaterial.

The COURT.—Objection sustained. (Deft. Richards excepts.)

Mr. PRATT.—Q. You remember of having a conversation with Dick Richards after you got back, when he got back in 1912? A. Yes, sir.

Q. I will ask you to state if it is not true that about September 3, 1912, in a conversation between yourself and Mr. Richards on Sullivan Creek in the Hot Springs country, if this didn't take place, and if this language was not used by yourself—(interrupted).

Mr. CLARK.—Without going into that we object as not cross-examination. We didn't go into any conversations had between him and Richards after he came back from the lower country. On the further ground that any conversations they had would not be binding upon the plaintiff in this action.

The COURT.—They wouldn't be binding on plaintiff, but I suppose [121] the purpose is to show contradictions. Objection overruled.

Mr. PRATT.—(Continuing.) Mr. Richards asked you if you would come to Fairbanks in case of getting an immediate hearing before the court. He asked you if you had represented him as your partner in the Iditarod, and you answered; "Yes, I did." Richards said: "On what understanding did you do that"? To which you answered: "I don't care to

(Testimony of Edward Williams.)

discuss it here, and I don't know how you feel about it, but I am sure I will not go to jail over it." Did you use that language in a conversation at that time and place?

Mr. CLARK.—We object as not cross-examination, and not in contradiction of anything testified to by this witness.

(Objection sustained, and deft. Richards excepts.)

Mr. PRATT.—Q. Did you have a conversation with Mr. Richards down there in the Hot Springs country about April 23, 1912, at Kelly & Anderson's roadhouse at Tofty, in which you said: Notary public Maltby, who made out the mortgage and lease to the American Bank, asked Williams where was his power of attorney, the paper, from Richards, so they could be recorded, and that you stated you didn't have any; and that the notary said that it was not legal, and proceeded with Mr. Williams to Mr. Hurley and told him the situation, whereupon Mr. Hurley answered: "Well, it is not business, but I will take a chance on you anyway."

Mr. CLARK.—We object as not contradicting anything that the witness testified to.

(Objection sustained. Deft. Richards excepts.)

Mr. PRATT.—Q. I will ask you to state if it is not true that on April 23, 1912, at Tofty, that you said to Mr. Richards that Mr. Hurley had promised that, when the bill of sale of lease was returned, signed and acknowledged, which was [122] done by Richards about April, 1911, all responsibilities attaching to Richards would be released, but, when

(Testimony of Edward Williams.)

the papers were procured, he refused to do it?

Mr. CLARK.—We object as not cross-examination.

Mr. MARQUAM.—Do you admit he testified in substance to that?

Mr. McGOWAN.—Ask him. It is immaterial anyway.

The COURT.—Objection sustained.

Mr. PRATT.—We except.

Q. Were you subpoenaed in this case?

Mr. McGOWAN.—We admit he was not.

Mr. MARQUAM.—We don't care for your admissions.

A. No, sir.

Mr. PRATT.—Q. How far did you travel to get here?

Mr. McGOWAN.—We admit that he came from Hot Springs.

Mr. MARQUAM.—We object to his admissions.

The COURT.—Counsel may make admissions. There is no use going over matters that are admitted.

Mr. MARQUAM.—We are entitled to ask a question and have an answer to it.

Mr. PRATT.—Q. How far did you travel to come up here?

Mr. McGOWAN.—We object to that as irrelevant, incompetent and immaterial, in view of the admissions we have made.

The COURT.—Objection sustained.

Mr. PRATT.—That is all.

Redirect Examination. [123]

Mr. McGOWAN.—Q. You testified that you de-

(Testimony of Edward Williams.)

livered some two or three letters to Mr. Adams sometime in September of 1911. Is that correct?

A. Yes, sir.

Q. Was that the first time that any officer of the plaintiff had ever been shown any one of those letters, or any letters?

Mr. MARQUAM.—We object as immaterial.

A. I can't recollect of ever showing any of them—

The COURT.—Objection overruled. (Deft. Richards excepts.)

A. I can't recollect of ever showing any of those letters to any of the bank officials previous to that time.

Mr. McGOWAN.—Q. That was after you had closed down on Flat Creek?

A. That I produced the letters?

Q. That you gave them to Adams? A. Yes, sir.

Q. When was that, what month?

A. The early part of September or the latter part of August.

Q. Of what year? A. 1911, I should think.

Q. Mr. Pratt also asked you about a telegram that was phoned to you at Hot Springs, and I understood you to say that the telegram was phoned over the phone to Richards & Williams. Is that correct?

A. I think that is the way, because the phone was called—it was registered as Richards & Williams.

Q. The phone was registered as Richards & Williams. A. Yes.

Q. Mr. Pratt stated something about your asking Mr. Richards to go and phone, because it was his

(Testimony of Edward Williams.)

phone and he could use it. Did you have the same right to use that phone that Richards did?

A. Yes, sir.

Q. On the index board of the telephone operator in Hot Springs how was your phone indexed?

A. Richards & Williams.

Q. And that was long before you left to go down to Iditarod [124] at all, was it not?

A. That was sometime before I went down—a short time.

Q. The bill of sale that you mentioned that you sent up for Mr. Richards to sign, that was sent in the letter of April 14th, was it not? In 1911?

A. I can't recollect the date of the letter.

Q. Defendant's Exhibit 2 (handing same to witness) on this trial, is that the letter in which you sent the bill of sale? A. Yes, sir.

Q. You testified on cross-examination, in answer to a question propounded by Mr. Pratt, that you thought the bill of sale was sent about the time that you gave the second note and the mortgage in February. That was a mistake, was it?

A. That was a mistake on my part in reference to the date.

Q. As a matter of fact, the bill of sale wasn't sent up until you wrote that letter in April.

A. No. But I may have had that bill of sale made out sometime before that.

Q. Did you receive that bill of sale from Mr. Richards prior to the 1st of July of that year?

A. No, sir.

(Testimony of Edward Williams.)

Q. In other words, you had made a contract, as you testified on cross-examination, to sell this property and the payment came due on the 1st of July.

A. Yes, sir.

Q. And one of the conditions of that transaction was that you must get a bill of sale from Richards.

A. Yes, sir.

Q. And on the 1st of July that bill of sale had not arrived. Is that right? A. Not at that time.

Q. Did you ever tell Mr. Hurley that you had sent a bill of sale [125] to Mr. Richards, and a letter to him in which you stated that he, Hurley, or the bank, would release Richards if he signed that bill of sale?

A. A letter to that effect to Mr. Richards?

Q. Yes.

A. I believe I mentioned in one of my letters here—I believe I mentioned that in one of my letters here.

Q. Did you ever tell Mr. Hurley about that down in the Iditarod, in February or March, or at any time? A. Not personally.

Q. Those were your own ideas?—

A. I understood those were the conditions; that when I made out the bill of sale. Mr. Albright did Hurley's business.

Q. Those were the conditions?

A. Those were the conditions.

Q. That when the bill of sale came back you could make that arrangement.

A. That is what I thought were the conditions.

(Testimony of Edward Williams.)

Q. There was something said about the payment of a thousand dollars, and Mr. Pratt asked you about it? Was there any payment of \$1,000.00 on this note in question—the \$3,500.00 note that is in suit here?

A. No. I think that was the Boulton note.

Q. It has nothing to do with this suit here, or the note in suit?

A. No. It was on the mortgage for \$1500.

Q. When did you first realize that you had placed yourself in a delicate position with reference to the papers you signed in connection with this affair?

A. If I recollect right, after I had received Mr. Richards' first letter. [126]

Q. Then it was Mr. Richards who first called your attention to your position, in one of his letters?

A. He said I had done wrong. That is the way I felt about it.

Q. Has any member of the bank staff, or any officer of the bank, or any attorney of the bank, or anyone else connected with the bank, ever *suggest* that you need fear anything for anything you had done in connection with the bank? A. No, sir.

Q. Are you under any duress or force of any kind from anybody to put you on the witness-stand?

A. No, sir.

Q. In Defendant's Exhibit 2, which was a paper they read, and questioned you as to whether or not you had made certain statements, and this is one of them, "We will make money." Is that the way you wrote to Mr. Richards in that letter, "We will make money"? A. I think so.

(Testimony of Edward Williams.)

Mr. McGOWAN.—Q. Did you at any time after you signed the first note, the first note in controversy in this case, the note of October 5th, and within ninety days after that, write to Mr. Richards requesting him to send the money down to you to pay the note? (Apparently reading from something as follows:) A. “I wrote and told him what I had done exactly, and I told him also I would need some money.” Going on: “I notified Mr. Richards what I had done”—(interrupted).

Mr. MARQUAM.—We object as not the best evidence. If he wrote it, it is in his letters.

(Controversy between attorneys as to demand for, and the existence of, and the possession of, such a letter.) [127]

(Objection overruled, and deft. Richards excepts.)

Mr. McGOWAN.—Q. Did you so write?

A. I don't say that I did exactly.

Q. What did you say about the payment of the money?

Mr. PRATT.—We object to that, as the letters are the best evidence.

The COURT.—You were called upon to produce the letter, and you have not done so.

Mr. PRATT.—I never heard about any such letter as that.

The COURT.—Objection overruled. (Deft. Richards excepts.)

The COURT.—That is what the question refers to; whether there is such a letter as that.

Mr. PRATT.—No. He is asking him to state the

(Testimony of Edward Williams.)

contents of an imaginary letter that he don't even say is in existence.

The COURT.—Answer the question. (Deft. Richards excepts.)

A. I just wrote to tell Mr. Richards the conditions of my transactions, and also—it was read in court this afternoon—about me asking for money, but I didn't say for notes. I think the letter was read in court to-day.

The COURT.—Q. That is the letter you refer to?

A. I don't know whether it is the letter that Mr. McGowan is asking me about or not.

Mr. McGOWAN.—Q. Is that the only one you wrote advising Mr. Richards of the amount due?

A. I needed money, and he criticized me—

Mr. McGOWAN.—Is that the only letter you wrote—the one here—referring to money matters?

A. Yes, sir.

Q. Were you at any time in the year 1910 or 1911, or both, employed in any capacity by the American Bank of Alaska, or by Mr. Hurley, as agent, or anything else? A. No, sir. [128]

Q. Did you ever at any time during those two years act on behalf of Mr. Hurley, or the bank, in any capacity, or for them? A. No, sir.

Mr. McGOWAN.—That is all.

Recross-examination.

(By Mr. PRATT.)

Q. I show you a contract. See if those signatures are genuine, yours, McLellan's and McKenzie's.

A. Yes, sir.

(Testimony of Edward Williams.)

Q. It is a copy of the contract you entered into on Flat Creek? A. Yes, sir.

Mr. PRATT.—I offer this in evidence.

Mr. McGOWAN.—We object, as irrelevant, incompetent and immaterial, not proper recross-examination, and a part of their case.

The COURT.—I do not think it is cross-examination on the last examination of the witness.

Mr. PRATT.—I don't suppose it is.

The COURT.—What is the purpose?

Mr. PRATT.—The purpose is to show that he took in some men at the time he gave this note that is in suit, sold them a half interest, took them in partnership, gave them a contract to mine there with him; that that was at the same time that he arranged with the bank to relieve Mr. Richards from even the appearance of liability by getting a formal conveyance from him.

Mr. CLARK.—That is immaterial.

The COURT.—Objection sustained.

Mr. PRATT.—It happened to be dated February 24th. He said he made this contract with them on February 20th. He sold McLellan & McKenzie this half interest on the 20th of February, and the writing is the 24th.

The COURT.—Objection sustained. [129]

Mr. PRATT.—It was allowed in evidence before as Defendant's Exhibit "A." This says (referring to paper) "for identification."

Mr. McGOWAN.—That is all. It was never put in evidence.

(Testimony of Edward Williams.)

The COURT.—I do not know what difference it makes whether it has been or not.

Mr. PRATT.—Q. You say you got that first letter from Richards dated December 8, 1910—you must have gotten that sometime in January, I suppose, didn't you? A. I can't recollect the dates.

Q. Anyhow, when you did get it, you took it from that that Richards was dissatisfied with you for using his name—signing his name there?

Mr. McGOWAN.—We object, as that has been fully covered.

The COURT.—Objection sustained.

Mr. MARQUAM.—We are directing this to the questions asked by McGowan, "When did you first feel that you were in a delicate position, or liable to get yourself in trouble," and he said, "After I got Mr. Richards' first letter." We want him to point out what part of that letter made him feel that he was liable to be prosecuted, and to show that that statement is untruthful.

The COURT.—Objection overruled, then, but it seems to me it is the whole letter.

Mr. MARQUAM.—We object to the Court passing upon that letter in the presence of the jury; that is for the jury to do.

The COURT.—The Court is passing on the admissibility of it.

Mr. PRATT.—Q. What part of that letter?

A. What letter do you refer to?

Q. December 8, 1910, signed by Richards, which you claim is the first letter you got. [130]

(Testimony of Edward Williams.)

A. It might be a mistake on my part. It was the first letter after I had notified Richards of my transactions. But I think I got the first letter, and it was brought to me. But it was the first letter after I had notified him of my transactions in the Iditarod, and what I had done.

Q. The first letter you received from him was the one dated September 21st?

Mr. CLARK.—That was the one that followed him down. December 8th is the one.

Mr. MARQUAM.—The first letter is September 21st.

Mr. MCGOWAN.—He said it was the first letter after he had advised Richards.

Mr. PRATT.—Q. What letter are you talking about that you got from Richards—which one?

A. The first letter after I notified him of my transactions.

Q. That is the one dated December 8th?

A. I don't know the date. I have not seen those letters for a long time.

Q. Didn't you get one dated just about a week after that?

Mr. MCGOWAN.—That is not cross-examination.

The COURT.—That has been gone over enough.

Mr. PRATT.—Q. Didn't you get that before you got the one dated December 8th?

A. I can't recollect.

Q. Wasn't that the one, the second letter in date that he wrote you, that you got first? Wasn't that the way? Didn't you get that first, and wasn't that

(Testimony of Edward Williams.)

the one that made you think—made you apprehensive that Richards might have you prosecuted for forgery and obtaining money under false pretenses?

A. The letter is there.

Q. What?

A. It is the first letter after the transaction. [131]

Mr. MCGOWAN.—Q. Is it in court here to-day? Has it been read?

A. I would like to hear it read myself.

Q. What is your last answer?

A. I think it is in court to-day.

Mr. PRATT.—Q. Here is a copy of it. Can you pick out in there the part that caused you to apprehend that Dick Richards was going to prosecute you criminally? (Hands witness paper.)

Mr. MCGOWAN.—We object as immaterial and not cross-examination.

The COURT.—Objection sustained. (Argument.)

Mr. PRATT.—Q. Point out the part of that letter that caused you to say that you felt in a delicate position—felt apprehensive?

Mr. MCGOWAN.—We object to the word “apprehensive”; that was not the wording used.

The COURT.—Objection sustained.

Mr. PRATT.—Q. What caused you to say that you felt in a delicate position?

A. For the business that I transacted down there and assuming Mr. Richards as my partner.

Mr. MARQUAM.—We object to that as not responsive.

Q. What part of that letter?

(Testimony of Edward Williams.)

A. And in reading this letter, after I had notified him exactly of what I had done, if any party had received this letter they would have judged from this letter that he was not satisfied with my transactions; and I didn't have to ask Richards about placing myself in a delicate position, because I could realize it myself.

Mr. MARQUAM.—Q. You mean, then, it is the whole letter and not any special part of it?

A. Not the whole letter.

Q. Is that the letter you hold in your hand now?
[132] A. Yes, sir.

Q. What date is that? A. December 8th.

Mr. PRATT.—Q. Did you ever have any apprehension from the bank or anybody connected with the bank?

Mr. McGOWAN.—They covered that fully on cross-examination.

The COURT.—Yes. You (to Mr. Pratt) have been over that matter.

Mr. PRATT.—That is all.

Mr. McGOWAN.—That is all.

(Here the trial is continued until 7:30 this evening, and the jury are placed in the custody of the bailiffs until the trial is resumed.)

March 25, 1914, 7:30 P. M.

Jury present. Trial resumed.

Mr. CLARK.—At this time I desire to introduce in evidence the deposition of Joseph H. Egler, taken by stipulation in this case, before E. T. Wolcott, on

(Deposition of Joseph H. Egler.)

January 13, 1914. The stipulation is attached to the deposition. (Reads deposition.)

[Deposition of Joseph H. Egler.]

“JOSEPH H. EGLER, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CLARK.)

Q. Your name is Joseph H. Egler? A. Yes, sir.

Q. Where do you reside?

A. Tofty, Hot Springs District.

Q. Are you acquainted with Edward Williams?

A. Yes, sir.

Q. Are you acquainted with Edwin Richards?

A. Yes, sir.

Q. Do you remember when Edward Williams went to the Iditarod?

A. Yes, sir. I remember about the time. It was in the fall of the year.

Q. Of what year?

A. As far as the year was concerned, it was about the time that that stampede was down there to the Iditarod. I don't know exactly what date it was.

[133]

Q. That was in 1910, was it not?

A. Well, I think so, to the best of my knowledge.

Q. Or was it 1911?

A. It was during the excitement down there, I know. When he went down there was in the fall of the year. He went down in a small boat—at least, I was told he went in a small boat.

Mr. PRATT.—I ask the witness to remember that

(Deposition of Joseph H. Egler.)

he is to testify only to what he himself knows.

Mr. CLARK.—Just what you know.

A. I don't know that he went to Iditarod at all, but I was told he went to Iditarod; in fact I seen him leave Sullivan intending to go to the Iditarod.

Q. Did he tell you he was going to the Iditarod?

A. Yes.

Q. Did you see Edwin Richards the following spring after Mr. Williams had left Sullivan Creek telling you he was going to the Iditarod?

A. Yes. I did.

Q. Where was it?

A. It was in the Central Roadhouse, Kelly & Anderson's.

Q. Where is that located?

A. On Tofty. It is called the Postoffice at Tofty,—the town of Tofty.

Q. Did you have any conversation about any interest that Mr. Richards claimed in the Iditarod?"

That question is objected to and withdrawn.
(Reads:)

"Q. Did you, in that conversation with Mr. Richards, discuss with him anything about purchasing any interest that he had—any mining interests?

Mr. PRATT.—I object as leading, immaterial and irrelevant."

Mr. PRATT.—I insist upon that objection.

The COURT.—Objection overruled. (Deft. Richards excepts.)

Mr. CLARK.—(Reads:)

"A. Well, the conversation that I had with Mr.

(Deposition of Joseph H. Egler.)

Richards was, he wanted to know if I didn't want to take that proposition off his hands.

Q. What proposition do you mean by, 'that proposition'?

A. The proposition that was—(interrupted).

Mr. PRATT.—I insist that the witness should state the conversation or the substance of it as near as he can remember.

Q. State the conversation. [134]

A. We were talking about mining matters. He was mining at that time on Cache Creek, and I was mining on Tofty. And he wanted to know if I didn't want to take up that proposition in the Iditarod. I told him at the time I didn't know. I said, 'What will it cost?' He says, 'I am in about six thousand dollars.' I told him I couldn't handle it, because I had spread out too much myself. And that was about all the conversation in reference to that that I can recollect of at the present time.

Q. You say the conversation took place in the roadhouse.

A. In Kelly and Anderson's Central Roadhouse.

Q. Do you know who was present at that time?

A. There was a lot of men present, but nobody heard our conversation, because we were talking to ourselves. We were in the dining-room at the time, and we were in the bar. We had a glass of beer and a cigar. We were in the postoffice. The postoffice and dining-room is all in one room.

Q. Who first opened the conversation?

A. Well, I was talking to him about what he heard

(Deposition of Joseph H. Egler.)

from the Iditarod. And he said it looked pretty good down there. And I think I asked him something about if Williams got hold of anything. He said, 'He has got hold of a lay down there.' I didn't know where the lay was, or anything about it, at the time, and he told me, but I don't know now, but I think it was on Flat Creek, if I recollect right.

Q. Then, what did he say?

A. He wanted to know if I didn't want to take that proposition off his hands.

Q. Did he mention Williams' name?

A. He mentioned Williams' name. But it seems as though there were some other partners connected with Williams. I don't really recollect what he said about Williams' partners, or anything, that is, who was connected with Williams.

Q. When were you first asked about whether you knew anything about this matter? A. This now?

Q. Yes.

A. To-day was the only time, or yesterday was the first time I was asked by anybody, outside of Jake Howell asked me if I knew anything, and I said I knew of something, but never was called on—(interrupted).

Q. Who first spoke to you about that?

A. Mr. Hurley in the bank.

Q. Then, who did you see next?

A. I was over to see you and McGowan. In fact, McGowan and you.

Q. Now, is that the only conversation that you had with Mr. Richards about this matter? [135]

(Deposition of Joseph H. Egler.)

A. Well, yes, I think it is. Mr. Richards and I are partners in other mining properties. This is the matter just as I understood the case at the time, and understand to-day. We are partners in some ground on Cache Creek. We are partners and have always been good friends. But this is a matter of just the truth, and I don't want you to misunderstand me. I want to state it to you just as I understood it at that time.

Q. Can you fix anywhere near what date or what time it was that this conversation took place?

A. I think it was along in the spring before sluicing; sometime, I think, before sluicing started.

Q. If Mr. Williams went down to the Iditarod in 1911, would that be in the spring of 1912?

A. Yes. It would be.

Q. You think it was before sluicing commenced?

A. I am quite sure it was.

Q. You are going back to Hot Springs to-morrow, are you?

A. Yes. I am all ready to go to-morrow. I have got all my stuff fixed up to-day to go home.

Mr. CLARK.—You may cross-examine.

Cross-examination.

(By Mr. PRATT.)

Q. This conversation happened in 1912, in the spring time.

A. Yes, I think it did, to the best of my recollection, Judge. Just the following year after Williams went down to the Iditarod.

Q. Did that happen before or after the sluicing

(Deposition of Joseph H. Egler.)

commenced, do you think?

A. What I mean to say, it would be before sluicing. I don't think that Williams went down, as I understood—(interrupted).

Q. This conversation; did that occur before the sluicing season commenced, or after?

A. Yes, I am quite sure it did.

Q. Before? A. Yes, I am quite sure it did.

Q. How much before?

A. I don't know as to that. It might have been six weeks.

Q. That would be in February or March?

A. Well, sluicing, as a general rule—I forget. I know the first of May—I couldn't give you the exact time in the spring of the year, but I know it was towards spring of the year.

Q. Six weeks before the first of May, would bring it back to about the middle of March, wouldn't it?

A. I think it was sometime in March, to the best of my recollection, Judge. [136]

Q. Didn't Mr. Richards tell you that Williams had some partners in a lay down there, and they were jangling and not getting along very well?

A. I don't know as he did.

Q. Didn't he tell you something to that effect?

A. I don't know as he did.

Q. Didn't he tell you something about Williams having some partners down there?

A. Well, he told me Williams had some partners.

Q. Now, isn't it true that he also told you that he was not getting along very friendly with them?

(Deposition of Joseph H. Egler.)

A. He said he didn't know how they were going to make out.

Q. And didn't he tell you that it was very likely, if you wanted to, that you could buy Williams out, or could buy the other partners out?

A. No. Here is what he told me: He said he was in about six thousand dollars.

Q. Nobody heard that conversation.

A. No. Nobody heard it but he and I.

Q. Were you in partnership with him then?

A. Yes. We owned some ground together on Cache Creek, and we still own it to-day as far as I know. That is on the Hillside and the Alabama.

Q. Your feelings toward him have not been very friendly of late? A. Richards?

Q. Richards, yes.

A. Certainly it has been friendly. We have always been neighborly, and are to-day, as far as I know.

Q. Has he been friendly toward you lately?

A. I don't know. He has not been any different.

Q. Where do you do your banking?

A. Well, when I have money I have been banking in both banks up until this last year. I usually do my banking, in fact, in every bank in town.

Q. Have you got an account in the American Bank?

A. I have an account with the American Bank, and I have a little account with the other bank.

Q. Are you indebted to the American Bank of Alaska in any sum?

A. Am I? Yes. I am indebted a few dollars.

(Deposition of Joseph H. Egler.)

Q. How much are you indebted to them now?

A. You want me to answer that question?

Q. Yes. A. Is that reasonable?

Mr. CLARK.—It is personal privilege. [137]

A. Then, I wouldn't answer that, unless I have to answer it.

Mr. PRATT.—I consider that you do.

Mr. CLARK.—You have admitted that you are indebted, and you don't have to answer how much.

A. That sounds reasonable. If I have to answer it, I will answer it; if I don't have to, I won't answer it.

Mr. PRATT.—I say, if you were in court, the Court would require you to answer it.

Mr. CLARK.—And I say, you wouldn't. But you can answer it if you wish to.

A. I owe him \$400.00.

Mr. PRATT.—Q. Did you get that since you were in town this time?

A. I got that since I have been in town.

Q. And the time you were getting that, you told him about this testimony that you knew of.

A. At that time I was getting that?

Q. Yes.

A. No. Not at the time I was getting that.

Q. You told him before?

A. No. I told him after.

Q. Where were you when this case was on trial—
(interrupted).

A. I will tell you the conversation, if that will do you any good, that took place.

(Deposition of Joseph H. Egler.)

Q. Where were you when this case was on trial in February or March of last year?

A. I was down to Hot Springs.

Q. You knew the case was coming on for trial, didn't you? A. Now again?

Q. No. The first time.

A. I know he had two trials.

Q. You knew the case was to be tried, and you knew witnesses were coming up last spring to try that case?

A. I know the case has been tried; that he had two cases—trials.

Q. All you know about that is somebody told you so—that they had two trials.

A. I saw in the papers that they had two trials.

Q. Now, while those trials were going on, you were down at Tofty? A. I was. Yes.

Q. Did you ever tell anybody then what you knew about this? A. Who? Me? [138]

Q. Yes. A. I told Howell.

Q. At that time? A. At that time. Yes.

Q. Did you tell him at that time?

A. Yes. I told him at that time—over a year ago.

Q. I thought you said in your direct examination that you hadn't told anybody at all until here recently, and that Howell was the one you told, and then you told Hurley.

A. I don't think I said that.

Q. You say you told Howell about this a year ago?

A. I did.

Q. Where were you when that happened?

(Deposition of Joseph H. Egler.)

A. Down around Sullivan.

Q. A year ago. That would be in January of 1913 that you told Jake Howell.

A. Over a year ago, I said.

Q. Then that would be back—(interrupted).

A. That was before you ever had a case.

Q. That would be back in 1912 that you told Sylvester Howell what you knew about this very thing.

A. That was before there ever was a case.

Q. Before any case was ever started?

A. Before any case was started here. Yes, sir.

Q. Are you mining down there now?

A. Yes, sir; and have been ever since I left here.

Q. I presume you got this money to assist you in your mining operations, here from the bank.

A. I got this money to use.

Q. In your mining operations—in your business as a miner? A. I wouldn't answer that question.

Mr. PRATT.—You don't need to, if you don't want to. That is all.

Redirect Examination.

(By Mr. CLARK.)

Q. Did you tell Mr. Hurley about these facts, or did he ask you?

Mr. PRATT.—I object as not proper redirect examination."

Mr. PRATT.—I insist upon that objection.

The COURT.—Objection overruled. (Deft. Richards excepts.)

Mr. CLARK.—(Continues reading:)

(Deposition of Joseph H. Egler.)

“A. I would like to explain it to you, so you will understand. [139]

Mr. CLARK.—Put your explanation in, then.

A. When I got ready to leave, I said to Mr. Hurley, ‘If there is anything I can do for you down there, don’t forget to notify me.’ He asked me if I knew anything about this Richards case, or what I knew about it. Well, then, I told him I didn’t know just—I stayed here two nights—(interrupted).”

Mr. CLARK.—(Continues reading:)

“Q. After you had your talk with him, you came over to see us? A. I did.

Q. Did you give him that information because he had loaned you money?

A. I should say not. It is a business proposition to borrow money from a bank and pay interest on it.

Mr. CLARK.—That is all.

Recross-examination.

(By Mr. PRATT.)

Q. What kind of security did you give him?

A. I gave him a note.

Q. Any chattel mortgage, or anything?

A. No mortgage, not a thing. Just a note.

Mr. PRATT.—That is all.

Mr. CLARK.—That is all.” [140]

[Testimony of C. J. Hurley, for Plaintiff.]

C. J. HURLEY, a witness for plaintiff, after being sworn, testified as follows, to wit:

Direct Examination.

Mr. CLARK.—Q. Your name is C. J. Hurley.

A. Yes, sir.

(Testimony of C. J. Hurley.)

Q. You are the president of the American Bank of Alaska. A. Yes, sir.

Q. Are you acquainted with Edward Williams?

A. Yes, sir.

Q. Do you know Edwin Richards? A. Yes, sir.

Q. Where were you in the fall of the year 1910?

A. Iditarod.

Q. Did you see Mr. Williams down in the Iditarod during that fall? A. Yes, sir.

Q. State the circumstances under which you first saw him, that is, in connection with any business transaction that he may have had with yourself or the bank.

A. In September of 1910 he was brought into the bank and introduced to me by Thomas Morgan, of Morgan & Litsey, with a statement that he had known him—(interrupted).

Mr. PRATT.—We object to that statement.

Mr. CLARK.—Q. You need not state what he told you about him. He was introduced by him at that time.

A. He was introduced to me, and Mr. Morgan said he would probably want to transact some business with me.

Q. Did you have any conversation with Mr. Williams at that time?

A. I don't remember that I did right at that time.

Q. Did you have any at any time after that, shortly after that?

A. Yes, sir. He opened up a bank account with us.

(Testimony of C. J. Hurley.)

Q. State the circumstances under which that bank account was opened, and detail as near as you can remember the conversation that you had with him. [141]

A. Mr. Richards stated that the money he had deposited was Richards' money.

Mr. PRATT.—We object to that, and move that it be stricken out, as incompetent and irrelevant testimony, mere hearsay. The declaration of Williams down there in the absence of Richards; any kind of a declaration, direct or indirect, that he was connected with Richards in business to the extent of being a partner of any kind is not legitimate testimony until there is a *prima facie* showing of some kind of a partnership. That is the purpose of this; to get a naked declaration from Williams, and rest upon that as proof that he and Richards were partners.

The COURT.—For that purpose it would not be competent. I understand this is part of the transaction down there. It is not proof of the partnership itself.

Mr. PRATT.—There is nothing upon which it can be predicated or said that the plaintiff has made a *prima facie* case; there is not any testimony prior to that. Declarations of partners, after there is proof of a partnership, are admissions against interest. If there had been a *prima facie* showing of a partnership, the testimony now offered here would be legitimate.

(Testimony of C. J. Hurley.)

The COURT.—The objection is overruled.

Mr. PRATT.—We except.

Mr. CLARK.—Q. State what the conversation was.

A. He stated that the money he had to open up the account with was given to him by Mr. Richards, and was Mr. Richards' money; that he had sent him down there to look up some proposition to see if he could get into something; they were partners together.

Mr. PRATT.—I move to strike that out as mere hearsay, in the absence [142] of Mr. Richards, and he is not bound by it.

The COURT.—He is not bound by that.

Mr. PRATT.—Then it ought to be stricken out.

The COURT.—I think he has a right to tell the transaction there. How the jury will consider it, depends on the case made before that, or as it shall be connected hereafter. As it is, it is not direct evidence of a partnership.

Mr. PRATT.—I move to strike out that part of his answer which said that Williams told him that Richards had given him this money and sent him down there to make an investment—something to that effect—as hearsay.

The COURT.—That may be stricken out.

Mr. CLARK.—Q. What, if anything, did he say as to how he was going to open the account?

Mr. PRATT.—We object as leading and suggestive.

(Objection overruled; deft. Richards excepts.)

(Testimony of C. J. Hurley.)

A. After making the statement, he asked my advice how to transact the business, the partnership affairs.

Mr. CLARK.—What did you tell him?

A. I advised him to open the account in the name of Richards & Williams.

Q. Did you give him any reason?

A. I told him if anything happened to him, Richards would have no trouble in proving his claim to the money—his interest in it; and, furthermore, that if he transacted the business in that way, he would have his checks as vouchers returned to him from the bank to account for all the money that Richards furnished him with, in the absence of keeping books. At the same time they might come in very convenient to him in making an accounting.

Q. Do you know how much he deposited?

A. Twenty-one hundred dollars. [143]

Q. Did you at any time after that have any further business dealings with him in connection with making a loan? A. Yes, sir.

Q. State the circumstances under which that came about.

A. He made application for a loan of \$3,500.00 with the understanding that he and Richards were partners in that down there.

Mr. PRATT.—We object to that, and move that it be stricken out, about the understanding that these two men were partners.

The COURT.—I think that matter can be governed by an instruction to the jury as to the effect of such

(Testimony of C. J. Hurley.)

evidence, and as part of the transaction between these two men.

Mr. PRATT.—It is not legitimate evidence. It should not go in. It might mislead some of them. They might think that was significant.

The COURT.—This witness has a right to testify concerning the transaction between him and Williams.

Mr. PRATT.—But he has not got a right to testify that he did a certain thing upon his understanding; just a naked declaration like that, upon his understanding that these two men were partners. He is supposed to give testimony as to facts.

Mr. CLARK.—He has testified that he told him they were partners.

Mr. PRATT.—That was merely his understanding.

The COURT.—I do not see how it can be separated very well. He may go ahead.

Mr. PRATT.—We except.

Mr. CLARK.—Q. Did you make a loan to him?

A. Yes, sir. I made a loan of \$3,500.00 in the name of Richards & Williams. Before making the loan, I further consulted Tom Morgan on the matter, and Williams said he had known—

Mr. PRATT.—We object to what Williams said.
[144]

Mr. CLARK.—Q. Without stating what Williams said, state whether or not you made any investigation as to the standing of Mr. Williams or Mr. Richards.

(Testimony of C. J. Hurley.)

A. Yes, sir, as to Mr. Williams. I knew Mr. Richards' standing.

Q. How long have you known Mr. Richards?

A. I had known of Mr. Richards ever since I have been in this camp.

Q. Did you know what his financial standing was at that time, in October, 1910?

A. Yes, sir, in a general way.

Q. How long after Williams made application to you for a loan did you grant the loan?

A. I couldn't say whether it was the same day, or in the matter of a day or two.

Q. When you made the loan, did you take a note for it? A. Yes, sir.

Q. I show you this instrument, marked Plaintiff's Exhibit 3 at the third trial, and ask you what that is.

A. That is the note I took at the time I made the loan.

Q. Mr. Hurley, that note states it is due in ninety days. State the reason for making it mature in ninety days.

Mr. PRATT.—We object as irrelevant, incompetent and immaterial, having nothing to do with the issues in this case.

(Argument. Objection overruled. Deft. Richards excepts.)

A. It was made for ninety days to give Williams time to write up to Richards for the money. Mr. Williams stated that Mr. Richards told him—(interrupted).

(Testimony of C. J. Hurley.)

Mr. PRATT.—We object to what Williams stated.

(Objection overruled, and deft. Richards excepts.)

A. Mr. Williams represented that when he left Hot Springs and Richards gave him this \$2,500—or whatever amount it was— [145] that if he got into something that required more money, 'to let him know and he would send it down to him. That was the reason the note was made for ninety days.

Mr. PRATT.—I move to strike that out.

(Motion denied, and deft. Richards excepts.)

Mr. CLARK.—Q. Was the note paid in ninety days? A. No, sir.

Q. What, if anything, happened between you and Williams about the time of the maturity of the note?

A. About the time of the maturity of the note, or it may have been several weeks after the maturity,— Mr. Williams was out on Flat Creek all the time,— and the first time I saw him in town I called his attention to the note being due—past due, and Williams said he had not heard from Mr. Richards yet, and was unable to take it up.

Q. Did you have any further conversation with him at any later date concerning it?

A. Yes, sir. And the next time I saw him I again called his attention to it being much past due. He said he had heard from Richards, and Richards could not spare the money at that time; that he was in poor health, and that he was making arrangements to operate on a large scale down at the Hot Springs. Also, I believe, he stated that Richards said he couldn't come down there himself.

(Testimony of C. J. Hurley.)

Q. Did you have any further negotiations about the 24th of February in regard to the matter, in 1911?

A. I took a renewal note of this note of \$3,500 on February 24th, 1911.

Q. Mr. Hurley, I call your attention to this note dated October 6, 1910, marked "Paid. February 25." Was there any money paid at the time that stamp was put on there?

A. No, sir, it was paid by this renewal note. There was no cash [146] transaction in connection with it.

Q. I show you this instrument—(interrupted).

A. The "Paid" stamp was put on the old note just merely to cancel it, so that we wouldn't be holding two notes.

Q. Did you surrender the old note at the time?

A. I think I did.

Q. I show you Plaintiff's Exhibit "H," Third Trial, and ask you if that is the note you have referred to as the renewal note. A. Yes, sir.

Q. What, if anything, was done at the time this renewal note was given, concerning the interest due on the original note? A. The interest was paid.

Q. Did you, at the time of taking this renewal note, obtain any security?

A. Yes, sir. I took a mortgage upon their interest in the lay on Flat Creek. That was the only available security that was there.

Q. Did you know in whose name the lay stood—the interest in the lay stood—the one that was pur-

(Testimony of C. J. Hurley.)
chased by Mr. Williams?

A. I can't say that I knew until this came up. Mr. Williams executed the mortgage in the name of Richards & Williams, and I naturally supposed it stood of record in their name.

Q. You didn't make any individual investigation?

A. No, I didn't. I think Major Albrecht did that.

Q. Major Albrecht at the time was looking after the business of the bank? A. Yes.

Q. At the time this note was signed and this mortgage executed, did you have any conversation with Mr. Williams concerning a power of attorney,—his being attorney in fact for Mr. Richards? [147]

A. At the time I took that note and mortgage I took Mr. Williams over to Major Albrecht's office, filled out the note myself, all but that date there (showing) and that is in Major Albrecht's handwriting.

Q. You refer to Plaintiff's Exhibit "H," Third Trial? A. That is the February 24th note?

Q. Yes, sir.

A. I took Mr. Williams over to Major Albrecht's office and told him I wanted him to draw up a mortgage, and Mr. Williams would execute it, upon the interest out on Flat Creek. And I went back to the bank, and after Major Albrecht—the same day towards evening, I think it was the same day, possibly the next day, Mr. Williams came into the bank and told me that the mortgage had been drawn up and Major Albrecht requested him to sign individually and for Richards by himself as attorney in fact. I never in-

(Testimony of C. J. Hurley.)

structed Mr. Albrecht to draw it in that way, and I told Williams I had not and I didn't understand why he drew it that way. It seemed unbusinesslike to me, and I didn't want him to take any chances signing any mortgage or executing it in the name of Richards as attorney in fact without a power of attorney, and I advised him to go to his attorney and ask him upon that point before he signed up the mortgage.

Q. To go to who?

A. To go to his attorney. I didn't mention any name.

Q. Did he go away from your office?

A. Yes, he did.

Q. Did he come back afterwards?

A. I don't recollect. He came back to me after that. I understood afterwards from Williams that he went to Mr. Maltby.

Q. Maltby was a practicing attorney at Iditarod?
[148]

A. Yes, sir.

Q. Did he sign the mortgage after that?

A. Yes. I didn't go to Maltby with Williams, but he left the bank to go and see Mr. Maltby sometime before he executed the mortgage. Maltby was commissioner at that time.

Q. After the mortgage was executed, did you have any further conversation with Mr. Williams concerning this matter, that is, anywhere within a short time after the mortgage was executed?

A. Not that I remember of. No, sir.

(Testimony of C. J. Hurley.)

Q. Has any part of this note ever been paid?

A. No, sir.

Q. Have you figured up the interest that is due on the note? A. Yes, sir.

Q. How much is it?

A. Thirty-seven months, \$1295. That is up to March 24th, this month.

Q. That would be up to yesterday. A. Yes.

Q. During the fall of 1910, had the wireless been erected in Iditarod? A. No, sir.

Q. Telegrams that *were be* sent from Iditarod, where was the nearest place to which they were taken for transmission?

A. To Nulato or Kaltag. Sometimes they were taken to Nulato and sometimes to Kaltag. It is not very far by water between the two points. That is, they were transmitted by mail from Iditarod to Kaltag or Nulato, and the reply came back in the same way.

Q. During that fall what, if anything, happened to the lay that was covered by the mortgage that you held? A. In the fall of 1910?

Q. Yes, sir. A. Nothing that I know of.

Q. Or in the summer or fall of 1911. [149]

A. They closed it down in the fall of 1911, along in the early part of August or first of September.

Q. What, if anything, did you do with the note—this note of February 24th, 1911—after the lay was closed down?

A. I sent it up here to this bank for collection.

Q. From whom?

(Testimony of C. J. Hurley.)

A. From the American Bank of Iditarod to the American Bank of Fairbanks, to Mr. Bruning, the cashier.

Q. Are you acquainted with the signature of Mr. Bruning? A. Yes, sir.

Q. Mr. Bruning is your cashier? A. Yes, sir.

Q. Is that your letter-head? (Hands paper to witness.)

A. That is our letter-head, and his signature.

Mr. CLARK.—We desire to introduce this in evidence.

Mr. PRATT.—We object to this paper upon the ground that it is incompetent, irrelevant and immaterial, for the reason that should the Court permit it in evidence it would be upon a theory that is not set forth in the complaint either directly or indirectly; in other words, it would be evidence upon an entirely different cause of action than the one set up here. (Argument.)

The COURT.—What is the letter about?

Mr. McGOWAN.—We desire to show a demand for the money. This is a letter we asked them for, and they gave it to us.

The COURT.—Was any demand necessary?

Mr. McGOWAN.—No, sir.

Mr. PRATT.—It was a letter addressed to us. We got the letter. (Argument.) It is to show an estoppel.

The COURT.—I don't understand that to be the purpose, but to show that they made a demand, which you say is not disputed. (Argument.) [150]

(Testimony of C. J. Hurley.)

Mr. CLARK.—We will pass that.

Q. Mr. Hurley, did you ever receive any communication from Mr. Richards prior to the time the renewal note was sent to Fairbanks to be collected? Did you ever receive any communication of any description from Mr. Richards?

A. To myself or to the bank?

Q. Yes, sir. A. No, sir.

Mr. PRATT.—Between what dates?

Mr. CLARK.—Between the 6th day of October, 1910, and the 6th day of October, 1911, did you receive any communication, between those dates, from Mr. Richards? A. No, sir.

Q. Did you ever, during the year 1910 or 1911, authorize or delegate Mr. Williams as your agent or representative to write to Mr. Richards, or to communicate any fact or thing to Mr. Richards?

A. No, sir. I never even suggested it to him.

Q. Or as the agent of the bank, or did the bank ever create him their agent for any purpose?

A. No, sir.

Q. Did you have any other dealings with him in connection with any transaction, that is, during the year 1910 and up to about the month of September or October, 1911, connected with any other transaction than this particular one we have been discussing? A. No, sir.

Mr. CLARK.—That is all. Your witness.

Cross-examination.

(By Mr. PRATT.)

Q. You got a letter after that one.

(Testimony of C. J. Hurley.)

Mr. McGOWAN.—We object to that. He objected to that one, so the reply to it is out of order.

(Objection overruled.) [151]

Mr. PRATT.—I want that letter of January 2, 1912. It was in evidence in the other case.

Q. Now, Mr. Hurley, you say you didn't get any letter from him between the 6th of November, 1910, and the 6th of November, 1911. I will ask you if you got that. (Handing paper to witness.)

A. 6th of October, Judge.

Q. Or October, rather. Whose handwriting is that? Is that Mr. Richards' letter to the bank?

A. It is signed by Richards.

Q. Dated January 2, 1912? A. Yes, sir.

Q. That was with reference to this last note, wasn't it?

Mr. CLARK.—We object as not the best evidence. The letter is the best evidence, and the one to which it is a reply.

Mr. PRATT.—I want to read this to the jury.

Mr. McGOWAN.—We object to it without the letter which it is in reply to.

The COURT.—Objection sustained.

Mr. PRATT.—We except.

Q. Mr. Hurley, you knew Dick Richards here when he was on Dome Creek, didn't you?

A. I don't think I knew him personally. I knew of him.

Q. You knew of his financial standing?

A. Yes, and I knew him by sight.

Q. It was pretty good? A. Yes, sir.

(Testimony of C. J. Hurley.)

Q. You knew him in the Hot Springs country?

A. Yes.

Q. You knew he was a man of means and employed people, and responded to his obligations, didn't you?

A. Yes, sir.

Q. Did you know this man Williams when he showed up there in your bank? A. No, sir.

Q. You never heard of him before?

A. I may have heard of him, but I didn't know him.

Q. You wouldn't loan him any money?

A. No, sir. [152]

Q. He told you he wanted to borrow money to buy an interest in the Boulton lay on Flat Creek, didn't he? A. Yes, sir.

Q. He told you how much he wanted?

A. Yes, sir.

Q. He wanted to borrow it himself, didn't he?

A. No, sir.

Q. Didn't he suggest that at first? A. No, sir.

Q. You say that he told you that Dick Richards was his partner? A. Yes, sir.

Q. What kind of a partner did he say?

A. He said he was his partner. He had sent him down there to become interested in mining, and Dick Richards was his partner.

Q. He didn't say whether he was a general partner, or side partner, or mining partner, or what sort of a partner.

A. He said he sent him down there to become interested in mining interests. That would make him a mining partner.

(Testimony of C. J. Hurley.)

Q. Did you make any investigation, other than what he said, whether that was true?

A. Nothing further than going to Tom Morgan and inquiring further about Mr. Williams.

Q. You didn't inquire whether Richards and Williams were partners, of Morgan, did you?

A. Yes, sir.

Q. He didn't know anything about it, did he?

A. I asked him his opinion, and he recommended Mr. Williams—

Q. *What* a minute.

Mr. McGOWAN.—Let him finish his answer.

Mr. PRATT.—I didn't ask him anything of that sort.

The COURT.—Answer the question.

A. I don't know if he knew of his own knowledge. That was the belief with him, that they were.

Mr. PRATT.—Q. Did you make any inquiry of anybody else? [153] A. No, sir.

Q. Did you do any wiring?

A. No, sir. I couldn't.

Q. In a day or two you made that loan, did you?

A. There was no telegraph station there to do any wiring. It would take a matter of two months to telegraph and get a reply.

Q. In a day or two after that, you made that loan?

A. Yes, sir. I may have made it the same day.

Q. You did it on the strength of him telling you that Dick Richards was his partner?

A. Yes, upon Mr. Richards' name.

Q. Did he tell you that he had a power of attorney

(Testimony of C. J. Hurley.)

or a written authority to sign his name to papers?

A. I don't think the matter ever came up at that time.

Q. You are sure about that?

A. Yes. I am quite sure about it.

Q. Quite sure?

A. Yes. I didn't request him to sign it, only in the firm name of Richards & Williams. And that was the way he applied for the loan.

Q. You made him a loan of \$3,500.00 that day, and paid the money or put the money to his credit in your bank? A. Yes, sir.

Q. Before that, he had brought \$2,100 there that he had brought with him, and deposited it?

A. Yes, sir.

Q. And on your suggestion he deposited it in the name of Richards & Williams, didn't he?

A. Not upon my suggestion. He asked in what way to handle the account.

Q. Upon your advice, then, he did that?

A. Yes, sir. [154]

Q. Didn't he tell you that he had tried to get a loan from the Miners & Merchants' Bank on his own name, on his own responsibility?

A. I don't recollect that he did. No, sir.

Q. He may have told you something like that?

A. He may have. If he did, it would not have been of any significance.

Q. You would have not loaned him a cent on his own name.

A. No, sir, nor the Miners & Merchants' Bank

(Testimony of C. J. Hurley.)

wouldn't have loaned him any money on Richards' name.

Q. The only reason you loaned him any money was that you knew Richards and had confidence in him? A. Yes, sir.

Q. After he got that money, and at the time he got that money, isn't this true, that one or the other of you said that Williams should notify Richards and see whether that was satisfactory or not?

A. No, sir. There was never anything of the kind said.

Q. Nothing of the kind? A. No, sir.

Q. By anyone?

A. Richards borrowed the money—

Q. What?

A. Williams borrowed the money, and was going to notify Richards and get the money from him. The note was made for ninety days.

Q. And Williams was going to notify Richards.

A. Yes, sir. That was the basis on which I made the loan; that he was going to get the money from Richards; that Richards—(interrupted).

Q. That is, you requested him—(interrupted).

A. I didn't request him. [155]

Q. You requested him to notify Richards?

A. I didn't do no such thing.

Q. I thought you said that was the consideration upon which you loaned him the money; that he was to notify Richards.

A. That was the basis upon which I made the loan, yes, sir. That was his own proposition—(interrupted).

(Testimony of C. J. Hurley.)

Q. You asked him—(interrupted).

Mr. McGOWAN.—I insist that the witness should be allowed to finish his answer.

The COURT.—Wait until he finishes his answers.

Q. Did you finish your answer to the last question?

A. When he made application for the loan he wanted the money long enough that he could write Richards and Richards could send the money down, and it was made for ninety days to give him ample time.

Mr. PRATT.—Q. And in some way you acquiesced in that; that you wanted or expected him to notify Richards?

A. I certainly supposed he was going to write to Richards for the money to take care of that note; yes, sir.

Q. Didn't you ask him that when he got a reply from Richards to come and let you know what it was? A. No, sir. I don't recollect.

Q. You are not sure about that?

A. Yes, I am sure about that.

Q. Did you notify Richards in any way at all?

A. No, sir.

Q. Did you ever notify him in any way about this note of February 24th, the one that is in suit here? Did you ever notify him about that at all until nearly the first of the next year? A. No, sir.

Q. You never mentioned the subject to him?

A. No, sir. [156]

Q. You never wrote him any letters on the subject at all, or your bank? A. No, sir.

(Testimony of C. J. Hurley.)

Q. You never sent him any word by anybody?

A. No, sir.

Q. Mr. Hurley, isn't it true that during the months of January and February now, 1911, after that first note had become due, that you were pressing Mr. Williams for a settlement and for payment? Isn't that true?

A. Certainly. The other note was due—past due.

Q. A number of different times?

A. A couple of times I think is all I saw him, two or three times.

Q. Didn't you ask him and press him to tell you what Mr. Richards had said in response to his letters? A. No. I don't know as I did.

Q. Didn't you ask him if he had notified Richards, and didn't he tell you he had?

A. No, sir, I didn't. I believe I asked him if Richards had sent the money down to him, and he said no. And that is the time—I don't know for certain if I asked him that time—when he told me that Richards wasn't in a position to send the money at the time; that he was in poor health and wasn't coming down himself, and had arranged to work on a large scale on Cache Creek, and therefore hadn't the money to spare at that time.

Q. When was that?

A. That was about the time I took the renewal note; at that time.

Q. In February? A. Yes, sir.

Q. How many letters did he speak of as having gotten from Mr. Richards in January and February,

(Testimony of C. J. Hurley.)

1911? [157] A. One letter is all I recollect.

Q. One is all that you remember of?

A. Yes, sir.

Q. Williams represented that that letter that came from Mr. Richards stated that he wouldn't send any money? A. Yes, sir.

Q. Didn't Williams also tell you that Richards in that letter had complained of him, and had denied his authority to sign the note? A. No, sir.

Q. Didn't he say something to that effect?

A. No, sir.

Q. He didn't? A. No, sir.

Q. Didn't Williams ask you to relieve Richards, at or about the time that you took this note that is in suit, of all responsibility?

A. I couldn't say for sure whether he did or not.

Q. You won't say whether he did or not?

A. No. He may have asked me to.

Q. Didn't you agree to do that when you took this new note, and took a mortgage on that Flat Creek property as security in place of Richards?

A. I certainly did not.

Q. You did take a mortgage on that Flat Creek property?

A. Yes, sir, and I took it in the name of Richards & Williams.

Q. Did you think at that time that was a valuable piece of property? A. I did not.

Q. You didn't?

A. I didn't know anything about the property any more than when I made the first loan.

(Testimony of C. J. Hurley.)

Q. It was on a creek where there were valuable mines? [158] A. Yes, sir.

Q. Presumably it was a good security for that loan?

A. No, sir. Mr. Boulton applied to me for a loan of \$5,000.00 more than once, and I loaned him \$1,500 on that security, and no more, and I wouldn't loan him any more.

Q. That was on Boulton's quarter or half?

A. On his interest whatever it was.

Q. A quarter or a half?

Mr. McGOWAN.—It was a half.

A. I loaned that before I made this loan, but Boulton wanted more at the time, and several times came to me and wanted more money on his interest, and I wouldn't advance it.

Q. You loaned to Boulton in the summer of 1910?

A. September, 1910.

Q. By February of 1911 things were picking up there on Flat Creek, and mining claims were more valuable, were not they?

A. There was not anything doing on this particular property that I know of.

Q. Up to that time you thought that if Richards was liable on that note that you were just as safe as you need be, didn't you?

A. Yes, sir, and I felt that he was liable.

Q. Now, sir, if you felt that way, and you didn't intend to release Richards, what did you take that mortgage for?

A. It was always customary to take security in

(Testimony of C. J. Hurley.)

connection with a note whenever you can get it,—

Q. You didn't ask—(interrupted).

A. —no matter how good a man is.

Q. You didn't ask for any mortgage on that first note, did you, of October 6, 1910?

A. No, sir. I made that for ninety days.

Q. And the other one you made for substantially 90 days? [159]

A. More than 90 days, to July 1st.

Q. March, April, May and June; that is four months.

A. And three months more. The same loan had been running already for seven months.

Q. When you made that second note and the mortgage, you were told distinctly then that this man Williams did not have any power of attorney or any written authority from Richards.

A. Certainly. I never understood that he had.

Q. You had been told before that that Richards had written a letter to Williams in which he had declined to do anything about that debt. A. No, sir.

Q. In which he had declined to pay it.

A. No, sir.

Q. Didn't you just tell the jury that Williams told you that Richards had written to him that he was sick, and didn't intend to come down there, and wouldn't advance any money, or wouldn't do anything?

A. That he didn't have the money to spare at that time.

Q. Didn't have the money to spare.

(Testimony of C. J. Hurley.)

A. Yes, sir, at that time.

Q. You knew that? A. Yes, sir.

Q. And you knew that this man didn't have any power of attorney? A. Yes, sir.

Q. Didn't you say right in that connection now, "Well, it ain't business for me to take these papers from you, signed up this way. You purport to sign as though you were an attorney in fact, when you haven't any power of attorney. It is not business for me to do it, but I will take a chance on it"?

A. No, sir, I did not. [160]

Q. Didn't you use words to that effect?

A. No, sir, I did not.

Q. Didn't you say something like that?

A. I told Williams I saw no reason why the mortgage should be executed in their individual names; that that was not my intention when I took him over to Major Albrecht's to have the mortgage drawn up.

Q. In their individual names?

A. Yes, sir. My instructions to Albrecht was to draw up the mortgage in the name of Richards & Williams.

Q. Mr. Hurley, you are a banker and a business man, and take lots of mortgages. A. Yes, sir.

Q. Didn't you know at that time, as well as you know now, that each member of a partnership, whether it is a mining copartnership or any other kind, has got to sign a real-estate mortgage? Didn't you know that?

Mr. McGOWAN.—We object to that as calling for

(Testimony of C. J. Hurley.)

a conclusion of law. It is not right and is not the law, anyway.

Mr. PRATT.—The witness is trying to say that he didn't want any individual names signed; that he wanted a firm name.

A. It was never put there at my request or at my suggestion.

Q. I asked you if you didn't know that all real-estate mortgages made by a copartnership must necessarily be signed by each individual copartner?

Mr. McGOWAN.—We object to that as not the law, as this is merely a lay; and it is calling for a legal conclusion.

(Objection sustained. Deft. Richards excepts.)

Mr. PRATT.—Q. Didn't you then and there request Williams—by that time you had found out that the assignment of that lay over there on Flat Creek had been taken in the name of Richards & Williams?

[161] A. I believe it—(interrupted).

Q. The time the mortgage was given?

A. I don't remember any circumstances connected with that deal at all.

Q. You don't? A. No.

Q. You didn't inquire into that? A. No, sir.

Q. Didn't you care?

A. Major Albrecht at the time was to inquire into the records, and see that any mortgages taken were given in the proper form.

Q. You got it from some source that that assignment of lease was in the name of Richards & Williams? A. Yes, sir.

(Testimony of C. J. Hurley.)

Q. Didn't you tell Mr. Williams at that time that if he would send a bill of sale up here to Richards and get him to sign it, conveying back his ostensible interest in that lay to Williams, that you would release Mr. Richards altogether? A. I did not.

Q. Nothing of that kind?

A. Nothing of that kind.

Q. Didn't you know that Williams did send that very bill of sale up here to Richards?

A. I may have known it at the time. Yes.

Q. As a matter of fact you remember that he did do it at that very time, don't you?

A. No, sir, I do not. I don't know when he sent that bill of sale up here.

Q. When you did know it, didn't you know what he was doing it for? A. No, sir.

Q. When it came back, didn't he come to you and ask you to fulfill your promise?

A. No, sir. [162]

Q. And release Mr. Richards? A. No, sir.

Q. And didn't you then refuse to? A. No, sir.

Q. Did you hear his testimony? A. Yes, sir.

Q. He is your witness?

Mr. CLARK.—That is self-evident.

Mr. PRATT.—He testified to all that.

Mr. CLARK.—We object to that. That is not his testimony.

The COURT.—Objection sustained. The jury will disregard the statements of counsel.

Mr. PRATT.—Q. What steps did you take to col-

(Testimony of C. J. Hurley.)

lect that debt during the summer, from Mr. Williams?

A. When it came due, I didn't take any legal steps. I kept urging payment every time I would see him.

Q. Didn't you get some of the gold-dust from the cleanups? A. Yes, sir.

Q. What amount?

A. I don't remember the amount.

Q. What was the value of it?

A. The value per ounce?

Q. Yes. A. In the neighborhood of \$17.

Q. No, no. The value of the gold-dust that was turned over to you? A. I haven't any idea.

Q. A thousand dollars?

A. More than a thousand dollars.

Q. Several thousand dollars? A. Yes, sir.

Q. The cleanups were very large there at first?

A. Yes, sir.

Q. It looked as though they had a great big thing for a while? [163]

A. I don't know as it looked that they had a great big thing. It was expensive ground to work. The production was pretty good, but it was very expensive to work.

Q. You didn't try to collect until after the 1st of July, did you?

A. No. The note wasn't due until the 1st of July.

Q. How long after the 1st of July were results good over there on Flat Creek?

(Plaintiff objects as immaterial. Overruled.)

Q. How long after the 1st of July were the mine

(Testimony of C. J. Hurley.)

results good on that claim?

A. Oh, from the 1st to the middle of July they began to clean up.

Q. After that they got pretty lean?

A. No. Their cleanups were pretty good until into August, as I remember it.

Q. Were you there for your division every time they cleaned up? A. What division?

Q. To get a part of your debt, your back debt.

A. No, sir.

Q. You were not looking after it very close?

A. Yes, sir.

Q. They had cleanups there every few days, didn't they? A. Yes, sir, every week.

Q. Did you have a man there at the time to try to collect something on that debt of yours?

A. No, sir.

Q. How many times did you send there to try to collect that of Williams?

A. I guess I sent a man out there a matter of half a dozen [164] times in August.

Q. In August. How many times altogether from the first of July until the end of the season, do you say?

A. From the first of July to the end of the season?

Q. Yes. How many times did you send there to try to get that money?

A. A half a dozen times; something in that neighborhood.

Q. About half a dozen times altogether?

A. Yes, sir.

(Testimony of C. J. Hurley.)

Q. And you got several thousand dollars on those trips? A. No. I didn't get anything on them.

Q. Nothing at all?

A. No, sir. They made no payments on the note.

Q. They must have had other debts.

A. Certainly they did, just as all men have right here to-day. We don't collect our loans until everything else is paid, mining loans.

Q. Who was he operating with? Who was he mining with?

A. That summer the firm was called McKenzie, Williams & Company.

Q. Did you collect all that was due from the firm of Williams, McKenzie & Company? A. No, sir.

Q. How much is back on that?

A. An overdraft of \$300 and some odd dollars.

Q. That is the one that is here? A. Yes, sir.

Q. What did you say the name of that firm was?

A. Williams, McKenzie & Company or McKenzie, Williams & Company. I am not certain which.

Q. How much in value, of dust, did you collect from that firm of Williams, McKenzie & Company during July and August, or during the summer of 1911?

Mr. CLARK.—We object as immaterial. [165]

The COURT.—What is the purpose of it?

Mr. PRATT.—I am asking these questions with the idea of why he did not apply that on this note in suit.

A. I will state that McKenzie, Williams & Company owed us nothing except this overdraft, and a

(Testimony of C. J. Hurley.)

few checks I paid, running the overdraft to the extent of some three hundred and some odd dollars. That was all they owed us when the mine closed down.

Q. But they had been drawing on you all summer, hadn't they, Williams, McKenzie & Company?

A. Certainly. And they had been depositing gold-dust to pay their checks.

Q. In large amounts? A. Yes, sir.

Q. Fifty thousand dollars?

A. Possibly so. I couldn't state as to the amount; a large sum.

Q. A large sum, yes, sir; all checked out immediately, just as soon as it was deposited, in the payment of labor and other debts, wood, etc.

Q. Of course you knew that Richards had declined to pay this note, this debt, at that time?

Mr. CLARK.—He said six times he didn't know it.

The COURT.—That has been answered several times.

Mr. PRATT.—Q. Did you ever see any of the letters that came to Williams from Richards? (Objected to. Objection withdrawn.) Did Williams ever show you any of the letters that Richards sent down to him?

A. Those letters that have been offered here in evidence are the only ones that I ever saw.

Q. When did you see them first?

A. Along the latter part of August or first part of September. [166]

Q. You sent a man by the name of Adams up there where Williams was to get some evidence, didn't you?

(Testimony of C. J. Hurley.)

A. Yes, sir, to get the letters or the correspondence between him and Richards, and those letters are the ones he brought back to me, and those letters gave me no notice, and don't to-day, of Mr. Richards' repudiation of the note.

Q. You know about another one of about December 16th that used plainer language, don't you?

Mr. CLARK.—We object, as not in evidence, and not cross-examination.

The COURT.—He may answer.

A. I have heard you talking considerable about it, but that is all I know about it.

Mr. PRATT.—Q. Haven't you heard Williams tell about it too? A. No, sir, I have not.

Q. Mr. Hurley, I will ask you if you gave this testimony at the second trial: (Reads:)

“Q. He told you that Richards had staked him to that amount of money— A. Yes, sir.”

That refers to the \$2,500.

“Q. To come down there and purchase something.

A. And also told him that if he required more money that he would send it down to him.

Q. He made that statement to you. A. Yes, sir.

Q. Now, then, you say that you made that note payable in ninety days especially so that Richards could be notified. A. Yes, sir.

Q. Did you take any steps to inform him?

A. No, sir.

Q. None whatever? A. No, sir.

Q. Did you suggest to Mr. Williams that he inform him?

(Testimony of C. J. Hurley.)

A. Mr. Williams was to write him and inform him, and request him to send the money down.

Q. He was. A. Yes.

Q. Did you especially request Mr. Williams to do so? A. No, sir."

Mr. CLARK.—We object to that, as that is the testimony here to-day that is not in contradiction of anything he stated.

The COURT.—Objection sustained.

(Deft. Richards excepts.) [167]

Mr. PRATT.—Q. Mr. Hurley, you have stated to this jury that you made this loan of \$3,500 on the statement of Mr. Williams that a man by the name of Richards, whom you knew lived up at Hot Springs, was his partner; on the strength of that you made that loan of \$3,500.

A. Yes, sir, after being so highly recommended by business men.

Q. Without making any inquiries at all as to whether that was true as to their being partners.

A. There was no one to inquire of down there, other than Morgan, that I knew of.

Q. Are you in the habit of doing business as a banker that way?

(Plaintiff objects as immaterial. Objection sustained, and deft. Richards excepts.)

Q. Mr. Hurley, did you ever make a loan under such circumstances as that before?

Mr. CLARK.—We object as immaterial.

Mr. PRATT.—Just on a naked statement of that kind?

(Testimony of C. J. Hurley.)

Mr. CLARK.—We object as immaterial.

(Objection sustained. Deft. Richards excepts.)

Mr. PRATT.—That is all.

Mr. CLARK.—That is all.

Mr. CLARK.—With the exception of putting on attorney to testify concerning the attorney's fee, that is our case. We didn't expect to finish so soon, or we would have had him here. We ask to put that testimony in before the case is finally closed.

Mr. PRATT.—We prefer that that evidence be put in before we begin.

The COURT.—I think you will not be at any disadvantage if they are allowed to do that.

Mr. PRATT.—If the Court please. We move for a nonsuit in this case on the ground that the plaintiff has not produced [168] sufficient evidence to go to the jury. The complaint is based upon a promissory note purporting to be signed by an attorney in fact, that is, one of the signatures. The proofs of the plaintiff's own witnesses, and other witnesses, are that the person who signed these papers did not have any power of attorney. The only thing left them would be that there was proof here sufficient to make a *prima facie* case of a mining copartnership. (Argument.)

(Motion denied. Deft. Richards excepts.)

[Testimony of Edwin Richards, in His Own Behalf.]

EDWIN RICHARDS, defendant, sworn as a witness in his own behalf, testified as follows, to wit:

Direct Examination. [169]

“I am the answering defendant in this case. My

(Testimony of Edwin Richards.)

name is Edwin Richards, commonly known as 'Dick Richards.' I have lived in this part of the country since 1905. I was in Dawson before that. I have mined in the upper country and I have done mining in this neighborhood. I have mined on 2 above Dome Creek. In February, 1906, I started in over there. We were there until July, 1908, and then I went down to Hot Springs. I knew Williams first in Dawson on Dominion Creek. He came down here before I did. He never worked for me in Dawson; he worked for me on Dome Creek. I think it was from February until May of the next year, about fifteen or sixteen months. He was helping me in general around there when we started in. We were sinking a hole, but when we had men enough, he went to cooking. He was cooking there at my place most of the time. I have seen Boulton over there on Dome, too. I wasn't much acquainted with him, but he used to drive points at Maddocks on the next lay, and I used to see him going up to see Williams at the cook house in the morning after he was through work. He was working nights. Once or twice he came to the boiler-house there and passed the time of day with me. I did not have any particular acquaintance with him. I first went down to Hot Springs in August; and then went down again in September, 1908. The second time, when I took the plant down there, Williams was—I don't know whether he went on the same boat, but he spoke about coming down. He said he was coming down. He was going along with me. He wanted to know if there was anything doing down there, and I told him

(Testimony of Edwin Richards.)

yes, and he came down. I can't say for sure whether he came on the same boat, but he was there when I got there. I told him he would get a job as soon as I had one when I got down there. He worked for me a few weeks and for a while in the fall, and during March and until September, 1909. He cooked that summer. I was working a lay over on Cache Creek. That is where my home is and my mining operations. I gave Williams and a man named Johanson a lay in 1909. I went out in the fall and turned the lay over to Williams and Johanson, Johanson was my old partner on Dome and they both wanted to take it over when I went out, to work that winter, so I turned the plant, and stuff I had there in the mess-house, wood and everything over to them and left them a little credit at Morrison's besides, to help them to start. Neither one of them had much. Williams had a little more than Johanson had at the time. They worked that lay for pretty near a year; I think they quit about August, 1910. The results were bad. That is, they hadn't made anything themselves, and they had been working hard there, and they were in debt when they got through. There was something between six and seven hundred dollars still owing to me. Then there were some other debts left around besides. They quit the lay. I returned in the spring of 1910, about the 2d or 3d of April. I was over on Cache for about two months. I guess in my own place, but I got hurt and went to the hospital, and was in Gibbon a good deal of the time that summer. I was living in the same mess-house and the same place that Williams

(Testimony of Edwin Richards.)

and Johanson did and had a cabin close by there, adjoining. We had a telephone there. The phone was there when I got back from Gibbon. I paid my share so the phone from that time on was a kind of a partnership phone. I guess Williams and Johanson paid for it until that time. Q. State whether you were a partner with them in any way, shape or form. A. No. There was no partnership whatever. I had a conversation with Williams in the spring of 1910 about Jack Boulton." [170]

A. He told me sometime that spring that he had a letter from Jack Boulton; that he had a lay down in the Iditarod, a pretty good lay, he thought, on Flat Creek.

Q. I wish you would relate to the jury all that you remember that he and you said about that.

A. Well, he didn't say a good deal about it. But it was supposed to be a good lay, and I guessed it was in a good location from what he said, because the general reputation from that part of the country was good.

Q. You say you guessed that. What made you guess that—who told you so?

A. Well, Williams told me some of it.

Q. Williams told you so? A. Yes.

Q. What did you do about that; anything at all?

A. No, I didn't do anything about it.

Q. Did you ever see or talk with anybody else, talk with any person who had been down there and come back? A. From the Iditarod?

Q. Yes.

A. No, sir, not that I know of. I remember that

(Testimony of Edwin Richards.)

Tom Williams came by there, and he went down; and I remember when Williams spoke of the matter, that he had gone to Hot Springs, and asked me to call Tom up and ask him to look at that lay after he got down there and see what it was.

Q. Yes?

A. But I don't believe Tom ever sent no answer at all about it.

Q. Edward Williams asked you to call up Tom Williams? A. Yes, sir.

Q. Did you do it? A. Yes, sir.

Q. Where did you get him?

A. He was at Hot Springs ready to leave. [171]

Q. What did you ask him to do for Williams?

A. To see what kind of a lay Jack Boulton had.

Q. Then, when you found out what kind of a lay he had, what did you ask him to do?

A. He didn't know anything about it. He was just going down there.

Q. What did you ask Williams to do when he got the information?

(Plaintiff objects. Overruled.)

Q. Don't you see what my question is? What information, and on whose behalf were you trying to get information from Tom Williams?

A. For Ed Williams.

Q. What made you do it?

A. Ed wanted me to.

Q. How were you situated there in a mining way at that time on Cache Creek?

A. What do you mean—financially?

Q. No. I want to know if you were foot-loose and

(Testimony of Edwin Richards.)

could have gone any place you wanted to, or whether you were stuck there and had a plant there, and had a mine that you had to attend to.

A. Well, I had a lot of ground there, and some of it I could go to work on.

Q. What about mining machinery and plant?

A. I had plenty of it there, a plant, a regular mining plant, you know.

Q. What were you doing? What did you start to do yourself after you got back from the hospital at Fort Gibbon in August of 1910?

Mr. McGOWAN.—We object to that as irrelevant, incompetent and immaterial. (Objection overruled.)

A. The first thing in the fall I wanted to sink a few prospect [172] holes because it was too early to start in tunnelling at that time, on some ground there that I was going to work that coming summer and open up in the spring. Just then I was preparing to sink a few prospect holes on some ground there that I didn't know whether there was anything in it or not.

Q. Will you state whether you were mining ground of your own there or had a lease on mining ground there where your plant was?

A. Yes, I had lots of ground.

Q. Were you owner or lessee?

A. I owned an interest in quite a bit of ground there, some fifteen or twenty claims; that is, some kind of an interest; some small, and some half, or a little better.

Q. Was your mining plant extensive or small and petty?

(Testimony of Edwin Richards.)

(Plaintiff objects as incompetent, and immaterial. Objection sustained.)

Q. Mr. Richards, you remember the circumstance of Mr. Williams getting a telegram, or you getting a telegram, from Boulton? A. Yes, sir.

Q. That has been introduced here in evidence.

A. Yes, sir.

Q. What did you do with that telegram?

A. I received that telegram up at—I happened to be in Howell & Cleveland's mess-house at the time when I heard our ring on the phone—the ring we had down at the other place—so I took it down there, that is, took the message down on a piece of paper there. That was along towards evening. And I stayed a little while, until I went back down to our own mess-house where we stopped, and I don't—at the time I don't think Williams was in the house when I went in. I think he came in a little while afterwards, though, and when he came in, I showed, him this telegram and he read it. And I [173] can't go into very close details on it, but I made this remark, that I didn't think this telegram was meant for me, and asked him if he didn't think it was meant for him. And Williams said he didn't know but it might be. I am telling you the general talk. We might have talked half an hour.

Q. I want the substance, and the important features of that conversation.

A. Anyway, I said that I wouldn't for my part send any money to anybody on a telegram like that, to Boulton or anybody else. And he—let's see. So, anyway, finally I told Williams that I didn't want to

(Testimony of Edwin Richards.)

go down or send any money down; if it was meant for me, I didn't want anything to do with it whatever. Then I asked Williams if he would like to go down there, and he said yes, he would like to go down, "But what is the use? I have not got anything to go down with." I says, "Well, if you think you could do yourself any good by going down there I would give you the money to go down." He thought a minute and then he said he would, being that he knew Jack so well and everything—he thought he could make a good deal, and decided there that he would go that evening. And I intended—the next day I was going to come up to Fairbanks anyway, as I had to get some more machinery, and I was going to leave the next day for Hot Springs, and I left the place about 9 o'clock.

Q. To refresh your memory: After you got that telegram, do you remember to have gone the next day or the next evening to Tofty?

A. No, I didn't go to Tofty, but Williams went to Tofty, I think, the next morning.

Q. What did he go there for?

A. He was going to see somebody that came from the Iditarod. [174]

Q. Do you know who it was?

A. I think it was Merrifield.

Q. What time did he get back?

A. I don't know.

Q. Hadn't he got back by the time you left for Hot Springs?

A. No. I left about 9 o'clock, something like that, if I remember well.

(Testimony of Edwin Richards.)

Q. And he had gone?

A. He had already gone to Tofty, the other way.

A. He was going to start, to come into Hot Springs and start from there.

Q. What had you done, with reference to staking him, up to that time, if anything?

A. Well, I had told him that I would give him the money to go. I don't know if I gave him any money or not, but I might have given him a little currency, on the place; but I couldn't swear to that, but I kind of think I did. But when I gave him the \$2,300.00 was at Hot Springs the next morning.

Q. Have you got the check you gave him there?

A. Yes, sir.

Q. Where is it?

A. I have it in my pocket here somewhere (produces same).

Q. Is that it? A. Yes, sir.

Q. What is the date of it?

A. This is September 16th.

Q. Do you know what date he left to go down the river?

A. I think he left the springs that day in the afternoon and went down the slough there somewhere.

[175]

Q. Does that date there refresh your memory as to when you drew that check, and where you were?

A. I was at Hot Springs that date.

Q. You are sure of that, are you? A. Yes, sir.

Q. Is there any other circumstance that makes you know it, besides the date of it? A. No.

Q. The condition of your bank account or any-

(Testimony of Edwin Richards.)

thing of that kind?

A. My account at Fairbanks, I think, was not enough to cover that check, and I wanted to be sure there was nothing went up ahead of me, and I wanted to explain the matter to Mr. Curtis in case—that I was going to go up on the first boat, anyway, and I wanted to give him to understand that in case—

Q. You explained to Curtis that you didn't have money enough?

A. There was not enough,—(interrupted).

Q. There was not enough on deposit, and you were coming up here to Fairbanks to make it good.

A. Yes, sir.

Q. Does that circumstance make you know where you were when you signed that check?

A. Yes. Sure.

Q. What conversation, or transaction, if any, did you have with Mr. Williams there in Hot Springs that day?

A. Well, there was something regarding this interest that Boulton had. It was evident from the telegram that there was something wrong about it; it says, some squeeze, or whatever word he used, in that telegram—"a freeze-out game," that was it—a freeze-out game. So, evidently, there was some trouble regarding it, whatever it might be. And Williams, in leaving, he said that he would thoroughly investigate the condition of this lay before he would put any money into it after he got down there. [176]

Q. What, if anything, did he say about being min-

(Testimony of Edwin Richards.)

ing partners, or working mining ground down there, or anything of that sort?

A. We didn't say anything of that kind at all. I just gave this money to Williams to give him a start down there. I staked him to it.

Q. How were you fixed financially at that time?

A. I was fixed all right.

Q. So that handing him \$2,500.00 didn't make any difference in your financial affairs, did it?

A. I had a little left at the time, yes, sir. Williams had been along with me a long time and I always tried to help him out, and, besides, they had worked hard on that ground, on that lay, and they had made nothing and were broke, were practically down and out, and I would like to see Williams make something.

Q. What, if anything, did he say to you the last time you saw him there in Hot Springs?

A. Well, one of the things he said, that I could depend on him that he wouldn't put a dollar into that ground unless everything was clear and he could see his way through with the money he had; and besides he says, "I appreciate your kindness in giving me this money to go down, and I will do the right thing by you."

Q. You heard Williams' testimony at this *second* trial, that in the N. C. Company's store there, apparently in the presence of Mr. Curtis, you told him that when he got down there if he needed more money you would go stronger than you had already. What do you say about that?

A. No, sir. I never said no such thing.

(Testimony of Edwin Richards.)

Q. Was there anything said at all about your putting in more money, or giving him any more money, upon any theory or for [177] any purpose?

A. No, sir, not a thing of the sort. *He taken* the \$2,000.00 down there, and if it was not sufficient to go into that deal that he would not go into it.

Q. You gave him the \$2,500.00 so that he would have \$2,000.00 left when he got there.

A. Yes, the \$500.00, he was to use that for his fare, and he had to get some clothing in the fall and some grub for himself for the winter.

Q. Well, now, he left on the boat, and where did he go?

A. I left on another boat for Fairbanks, on the steamer "Tanana," I think it was.

Q. When you came up here, you wrote that letter to him of September 21st?

A. Yes. I met some people on that steamer, and I had a better idea of what the conditions were in the Iditarod. I never knew before, and never had a good line on what kind of ground, or whatever there is down there as to *to* working of ground, what it was, all the conditions of the ground in general.

Q. After getting that information, your idea was that you didn't want him to get that money of yours tied up.

Mr. McGOWAN.—We object to that as leading, suggestive, irrelevant, incompetent, immaterial, calling for the contents of a written instrument.

(Objection sustained. Deft. Richards excepts.)

Mr. PRATT.—Q. How long did you stay here in this town?

(Testimony of Edwin Richards.)

A. Oh, I don't think I was here very long.

Q. Where were you doing your banking business at that time? A. The Washington-Alaska Bank.

Q. That took you back down there in September, 1910, did it not?

A. Yes, sir, back to Hot Springs. [178]

Q. You got back down there in September or October, 1910?

A. Yes. About four days would be about all I was here.

Q. Where did you stay during the winter of 1910 and 1911?

A. I was on Cache Creek in the Hot Springs District.

Q. What were you engaged in—what kind of business?

A. Well, I was doing a little prospecting in the fall for a little while until I got started sinking a shaft later on in the winter, and getting some wood and running tunnels.

Q. In other words, you were mining down there.

A. Yes, sir, mining; general mining.

Q. On a large scale or a small scale, generally?

A. Well, it is what you call a 40 or 50 horse-power plant.

Q. Did you stay there all the summer?

A. Yes, sir.

Q. Mined that season? A. Yes, sir.

Q. When did you leave there?

A. I left there about the end of September.

Q. Where did you go?

A. I went down to San Francisco.

(Testimony of Edwin Richards.)

Q. In the meantime, in September or October, 1910, until— What month did you say you left in 1910?

A. About the end of September, I guess it was.

Q. You were there and mined on Cache Creek in the Hot Springs District. A. Yes, sir.

Q. In this country. And you had this correspondence in the meantime, during that time, with Mr. Williams. A. Yes, sir.

Q. Did you ever have any correspondence at all with the bank? A. No, sir.

Q. Did you ever get any notification or notice from them of any kind?

A. No, sir, not a word. [179]

Q. Did you ever get any at all after that?

A. After that, yes.

Q. Now, then, up to the time that you left that Hot Springs country in September of 1911, had you any notice from anybody, Williams, or the bank, or anybody else, about this note that is in suit, dated February 24, 1911? A. No, sir.

Q. What particular note had you had some talk about, or had some letters with reference to?

A. The note made out in October.

Q. With reference to that, you had written several letters, had you? A. Yes, sir.

Q. Two of them have been read here in evidence.

A. Yes, sir.

Q. Now, sir, was there another letter between those two, on or about the 16th of December?

A. Yes, sir, there was another one.

Q. Who was that addressed to?

(Testimony of Edwin Richards.)

A. Edward Williams.

Q. Was that mailed to him? A. Yes, sir.

Q. What, if anything, do you remember about you stating distinctly in that letter about his having signed your name to the note of October 6, 1910?

A. Amongst other things—I don't remember the whole contents of the letter, but I know I put in this sentence in there, so as to impress upon Williams for doing that: "I will not be responsible for any notes or whatever else you may have signed my name to. Now, let me know as soon as possible if [180] you have revoked the same."

Q. After that, and in response to that, did you get any other letters from Williams with reference to that, with reference to doing that, or trying to do it?

A. Yes, sir.

Q. What was the purport of those letters?

A. The letter I received sometime along about the first part of May, I think it was. That was the first one I think I had regarding the matter.

Q. Is that one of the letters that was read here in evidence? A. Yes, I think so. Yes.

Q. Did you get a blank deed or conveyance of some kind?

A. I had a deed already made out, only to sign and swear to it.

Q. He sent it to you? A. Yes, sir.

Q. You signed that up and sent it back?

A. Yes, sir.

Q. When did you learn that he had bought a three-quarters interest, now, in the Boulton lay and taken an assignment in your name as well as his own?

(Testimony of Edwin Richards.)

When did you learn that?

A. The first letter I received about December the 5th or 6th I think it was.

Mr. PRATT.—Q. Was that the letter that informed you that he had taken an assignment of the lay in both your names? A. Yes. [181]

Q. Then you immediately wrote back to him to change that or revoke it?

(Plaintiff objects as irrelevant, incompetent, immaterial and not the best evidence; sustained. Deft. Richards excepts.)

Q. After that, you got this letter that you got in May in which he said he would do it, and enclosed the bill of sale. Is that right? A. Yes, sir.

Q. What did you do with that blank form of bill of sale?

(Objected to, as witness has said that he sent it back. Objection sustained.)

Q. Now, Mr. Richards, is there any intimation in any of the letters you got in the summer of 1911, and after February 24, 1911, that a new note and a mortgage had been given at that time?

(Plaintiff objects as not the best evidence; the letters speak for themselves. Objection sustained.)

Q. State whether any of the letters from Williams to you after February 24, 1911, during that summer, now, made any reference to a note and mortgage of date February 24, 1911.

(Plaintiff objects as calling for a conclusion, and not the best evidence. Objection sustained.)

Q. Mr. Richards, when did you find out from the

(Testimony of Edwin Richards.)

bank, we will say, that Williams had signed up a note, in your name, of February 24, 1911? When did you find that out?

(Plaintiff makes same objections. Overruled.)

A. It was on December 28th, I believe.

Q. What year? A. 1911.

Q. Where did you get it?

A. I received it in San Francisco.

Q. How did it happen to come there?

A. It was mailed to Hot Springs, and then re-addressed to Tofty, and then readdressed from there to San Francisco. [182]

Q. That letter was from the bank here?

A. Yes, sir.

Q. They notified you of this same note—(interrupted).

(Plaintiff objects as incompetent, asking for the contents of a written document. Objection sustained.)

Q. The subject of that letter was the note and mortgage of February 24, 1911?

(Plaintiff objects for the same reasons; sustained.)

Q. Did you reply to that?

Mr. McGOWAN.—We object on the same ground. If there is a reply, it is in writing.

Mr. PRATT.—Get that. (Addressing clerk.)

Mr. CLARK.—We object to that until the letter to which it is an answer is first introduced.

Mr. PRATT.—Q. I will show you this right now. Whose handwriting is that? A. My own.

Q. What is the date of it? A. January 2, 1912.

(Testimony of Edwin Richards.)

Q. Signed by yourself? A. Yes, sir.

Q. And addressed to whom?

A. Addressed to—(interrupted).

Mr. McGOWAN.—We object to that. It speaks for itself.

Mr. PRATT.—I offer this in evidence.

Mr. CLARK.—To which we object unless the letter to which it is an answer is introduced.

Mr. PRATT.—Then put them both in.

Mr. McGOWAN.—We object to both of them as irrelevant, incompetent and immaterial.

The COURT.—What is the purpose?

Mr. PRATT.—The purpose of this is to show that the minute he got [183] notice of this note in suit he repudiated it in this letter to the bank, and I will show by him that he never heard before in his life that there was such a note.

The COURT.—You cannot prove that in that manner. The objection is sustained to the letter.

Mr. PRATT.—We except. I will ask you that that he marked for identification. (Marked as Defendant's Identification 6.)

The letter sought to be introduced in evidence is an answer to the letter which counsel for plaintiff sought to introduce in connection with the testimony of Mr. Hurley just before the close of his direct examination, to which counsel for defendant Richards objected and which objection was sustained. The letter sought to be introduced at the time reads as follows: [184]

[Defendant's Exhibit 6—Letter, Dated January 2, 1912, Edwin Richards to American Bank of Alaska.]

San Francisco, Cal., Jan. 2/12.

Winchester Annex,
50 Third Street.

American Bank of Alaska,
Fairbanks.

Mr. Bruning:

Dear Sir:—

I have just received pass book and a note concerning a note from Iditarod for \$3,500.00 and overdraft for a sum \$327.00 which had evidently been long on way, but will comply with an answer at once, as it is a surprise to me. I am sure you are aware I have not signed that note, neither was Williams or anyone else authorized to do any business of that nature in my name, as for the overdraft, also I had nothing whatever to do with their operations at Iditarod. I stand ready at any and all times to settle my accounts, as my record up in Alaska will show, and if any further information in this matter is required, my address at present is above, but I expect to be in Fairbanks about end of March this year, when I will call on you on my way back to Hot Springs.

Respectfully yours,

EDWIN RICHARDS.

[Indorsed]: #1815. Third Trial. Deft's Ident.
6. Mar. 25, 1914. P. R. W. [185]

(Testimony of Edwin Richards.)

(The Court continues the trial until 10 o'clock tomorrow morning, and the jury withdraw in charge of the bailiffs.)

March 26, 1914, 10 o'clock A. M.

Jury present. Trial resumed.

EDWIN RICHARDS, resumes his testimony on direct examination and testified as follows, to wit:
(By Mr. PRATT.)

Q. Mr. Richards, you got a letter from Williams from the Iditarod dated October 24, 1910, which is in evidence here, in which he stated that he deposited some money—the balance of the \$2,500.00—in the American Bank of Alaska in the name of Richards & Williams at the advice of Mr. Hurley. Do you remember that letter? A. I do.

Q. October 24, 1910, was the date of the letter, signed by Mr. Williams, addressed to you, which you got on or about the 7th or 8th of December.

A. Yes.

Q. Do you remember the information in that?

A. Yes.

Q. That on the advice of Mr. Hurley, he deposited that money in the name of Richards & Williams.

A. Yes, sir.

Q. Do you remember whether there was anything said in that letter about checking it out?

(Plaintiff objects, as the letter speaks for itself. Objection sustained.)

Q. You responded to that feature of it in your reply of December 8th, did you not? A. Yes, sir.

Q. What, if anything, did you know about checks

(Testimony of Edwin Richards.)

on that bank from [186] that on until the first trial? A. I didn't know anything at all.

Q. Did Williams ever say anything to you, any word, about checks?

A. No, sir. He never said anything.

Q. Did the bank ever write to you and say anything about his drawing checks there?

A. No, sir, never did. The first time I ever seen any was here on the first trial. I happened to see a check here then.

Q. There was one at that time?

A. One, I think.

Q. To a man named Lund. That check has been introduced this time? A. Yes.

Mr. McGOWAN.—One check in, and you admitted the rest had been signed and put through in the same manner.

Mr. PRATT.—Undoubtedly. The checks are here, but the others were not marked at all.

Mr. McGOWAN.—No.

Mr. PRATT.—Q. Where were you during the winter of 1911 and '12?

A. I was down in California most of the time.

Q. What time did you get there?

A. I got there about the first part of November.

Q. When did you leave to come back here?

A. I left there about the 20th of March, 1912.

Q. Which way did you come; how did you come?

A. I came by way of Seattle and Chitina and through Fairbanks.

Q. Did you stop here at Fairbanks?

(Testimony of Edwin Richards.)

A. Yes, sir.

Q. How long?

A. I guess I was here four or five days.

Q. What bank were you doing your banking business at at that time?

A. In the American Bank of Alaska at that time.
[187]

Q. How long had you been, prior to that time?

A. Pretty near a year, I think; about ten months.

Q. Did you see Mr. Hurley at that time at the bank? A. Yes. I did.

Q. Did you have any conversation with him about this note? A. Yes, sir.

Q. What was it?

A. I went in the bank there, and told him the same thing as I told him in the letter from San Francisco—that I didn't see why he could expect me to pay the note; that I had nothing to do with it, and never authorized anybody to sign it, or anything of the sort—Williams, or anybody else.

Q. Was anything said about Williams being your mining partner? A. No, sir.

Q. Was anything said by you to—(interrupted).

A. I told him Williams or anybody else; that I never had a partner or anything in the Iditarod, Williams or anybody else.

Q. What did Mr. Hurley reply to that?

A. I don't quite remember what he said about it.

Q. What steps did he propose to take to try to collect it? A. He said nothing to me that day.

Q. At any time before you left.

(Testimony of Edwin Richards.)

A. Two or three days afterward, Mr. Hurley—I was going by—called me in the bank, and he told me at that time that he was going down to the Iditarod when navigation opened, and he said there was some of that lay—or that lay was still held, and good, and he thought he might recover on that lay, and, if he did, he was going to let me know about it during that fall some time.

Q. When were you sued? [188]

A. Along in October. They attached about the first part of September, 1912.

Q. The summons is dated the 14th of August, 1912. Was that served in September after that, do you think?

A. Yes. I think it was about the 4th or 5th of September.

Q. Did you hear anything from Mr. Hurley or the bank here between the time you talked to him here in March and the time the summons was served and the attachment made? A. No. Not a word, sir.

Q. You don't know what became of Mr. Hurley that summer.

A. No, I don't. I saw in the papers that he had went down there.

Q. There has been some talk here about a man by the name of Morgan who seemed to introduce Mr. Williams to Mr. Hurley. Did you ever know Morgan? A. I knew Morgan. Yes.

Q. Where? A. On Dome Creek.

Q. Did he ever live in the Hot Springs country?

(Testimony of Edwin Richards.)

A. No, sir, not that I know of. I am pretty sure he didn't.

Q. Did you even know that he was in the Iditarod country at that time?

A. Yes. I heard from Mr. Litsey, in Fairbanks here, that he had gone down there sometime; I can't say when.

Q. You never had anything to do with him in the Iditarod? A. Who—Morgan?

The COURT.—What is the purpose of this?

Mr. PRATT.—They seemed to try to make it appear that Mr. Morgan had a right to sell something.

The COURT.—There is no testimony to that effect.

Mr. PRATT.—Q. You heard the deposition of Joe Egler read, did you not? A. Yes. [189]

Q. In which he says that five or six weeks before the commencement of the sluicing season in 1912—(interrupted).

Mr. McGOWAN.—He didn't testify to anything of the kind.

Mr. CLARK.—He said, the next spring after Williams went down to Iditarod.

Mr. PRATT.—He tells it both ways, I admit. You can have it either way you want it. I don't care. (Continuing question:—) —in which he said that five or six weeks before the opening of the sluicing season in 1912 or 1911—I don't care which you put it—that you had a conversation with him on Sullivan Creek in which you proposed to sell your interest in some ground on Flat Creek—(interrupted).

A. No, sir.

(Testimony of Edwin Richards.)

Q. I think he said it occurred at Tofty—and told him that you were \$6,000.00 in that.

A. I never said no such thing, Judge, to Mr. Egler. There is lots of people down there asked me the same thing as he asked—I couldn't tell how many.

Q. What was your conversation?

A. What had Williams done down there? A lot of people asked me that about Williams.

Q. You did have some conversation with him along that line?

A. I might have had with him. I couldn't remember with him or anybody else, because so many asked that. It was so long ago that I couldn't make any difference between Egler or anybody else.

Q. What do you say about your telling him that you had \$6,000.00 in that lay there, and wanted to sell it to him?

A. I never said no such thing, Judge, to no one. I never had that money involved in the thing down there at all, and I had no reason to make that expression, none whatever. [190]

Mr. PRATT.—Q. In the spring of 1912, when did you get down there to Tofty and to Sullivan Creek?

A. I arrived there near about the 23d or 24th of April. They were almost through sluicing the dump where I was.

Q. He testified here that this conversation occurred at Tofty on Sullivan Creek before the sluicing season commenced five or six weeks. Were you there in that country at that time?

A. Not in that year; no, sir.

(Testimony of Edwin Richards.)

Q. In the year 1912? A. No, sir.

Q. You probably were, in 1911?

A. I was there in 1911. Yes.

Mr. PRATT.—Cross-examine.

Cross-examination.

(By Mr. McGOWAN.)

Q. You say that you didn't know much about Jack Boulton.

A. I wasn't much acquainted with Mr. Boulton. No.

Q. He was not a very good friend of yours—just an acquaintance. Is that right?

A. Just an acquaintance, yes, sir.

Q. And you didn't understand why he should send to you for \$2,000.00, of course, did you? A. No.

Q. Did you send Mr. Boulton a telegram about the 16th or 17th [191] of September that Mr. Williams was on his way down with money from Hot Springs?

A. I don't think I did.

Q. Are you sure?

A. Well, I wouldn't be sure, but I think there was a telegram sent, but I don't know whether I sent it or Williams sent it.

Q. Williams left at 4 o'clock in the morning, didn't he? A. Left the springs?

Q. Yes, sir.

A. I couldn't tell you for sure when he left.

Q. He left before the telegraph office opened that morning, didn't he?

A. I don't know on what date.

(Testimony of Edwin Richards.)

Q. You don't know. Didn't you, as a matter of fact, go over to the telegraph station and send a telegram to Boulton that Williams had left?

A. I don't remember doing it.

Q. You may have?

A. Well, I can't recollect doing it at all.

Q. Sir?

A. I don't remember doing it at all.

Q. You gave Williams this money and told him to go down there and do as he pleased with it. Is that right?

A. Yes, Williams was to use his own judgment on it.

Q. You told Williams to use his own judgment, did you?

A. No. This is the way, if I can explain it.

Q. Sir?

A. I will explain to you just the way he got it.

Q. Yes?

A. I asked Williams if he would like to go down, and Williams said he would, but what is the use, he didn't have the money [192] to go with. I said, "If you want to go, if you think you can do yourself any good, I will give you the money to go down with."

Q. That is all?

A. So he decided to go, and arrangements were made, and of course I gave him—we had some other talk, and he got the money, and went down.

Q. Yes, sir?

A. And he was to use his own judgment, of course.

(Testimony of Edwin Richards.)

That money, it was his own money to handle.

Q. Have you finished your answer?

A. Yes, sir.

Q. Did you tell him to use his own judgment, on the morning or on that day that he left?

A. Use his own judgment, yes.

Q. You did tell him to use his own judgment.

A. He said he would inquire into the matter, and see that it was all right, before he put it in.

Q. Did you tell Mr. Williams the day before he left, if he went down there to use his own judgment?

A. I told him to use his own judgment; yes, sir.

Q. That was after he had the money in his possession?

A. After the discussion took place, he was to investigate the matter, and, if he thought it was proper for him to go into the thing after he investigated the condition of the lay, that he could put this money into it and carry himself through, and he was going to put it in, otherwise he would not put it in at all, that he wouldn't put a dollar in.

Q. At that time there was not anything said about you going further, if necessary?

A. No, sir, I never said that.

Q. That part of the conversation where you told him to use his [193] own judgment, did happen, did it? A. I told him, as he went down, of course.

Q. Who hired the small boat that took him down there?

A. I got Sam Campbell to take him down to Gibbon. I didn't want to see Williams go down to Gib-

(Testimony of Edwin Richards.)

bon alone in a small boat.

Q. You attended to that?

A. I hired this man to take him down. Mr. Curtis had a wire from Gibbon and it said that the last boat was going to leave Gibbon the next day, and the only way to get down there was for Williams to go down in a small boat. I didn't want to see Williams go down alone in a small boat, and I sent the boat down and had the boat brought back.

Q. You hired a boat? A. Yes, sir.

Q. And hired a man to take him down?

A. Yes.

Q. And paid that man's expenses down and back to Hot Springs on the steamer with the boat?

A. Yes.

Q. All at your own expense? A. Yes.

Q. At an expense, and in addition to the \$2,500?

A. Yes.

Q. You talked over the situation about this Boulton lay with Mr. Williams quite considerably before he finally went down there, didn't you?

A. I never brought the matter up myself at all.

Q. Did you talk it over with him?

A. Williams used to talk about it occasionally.

Q. Williams talked, and you sat with your hands folded and listened to him?

A. I had no interest in it.

Q. Did you talk it over with him at all, or did you sit with your hands folded and listen to him? [194]

A. The two men sitting in the cabin together, he talks about Jack having a lay down there, and he

(Testimony of Edwin Richards.)

said he wanted him to go down there in the spring.

Q. Then you did talk it over with him?

A. Talked that way.

Q. That telegram, one of the exhibits in this case, fifty thousand at stake, looked pretty good to you?

A. It had no effect on me whatever.

Q. It didn't interest you a bit? A. No, sir.

Q. You testified on direct that you gave this money to Mr. Williams to start down there, staked him to it.

A. Yes.

Q. Is that correct? A. Yes.

Q. You expected no return from any earnings from this money?

A. I expected Williams to make good sometime, if he made it.

Q. Did you expect any share in the profits of the venture?

A. I did not, only what Williams said, that he would do the right thing.

Q. You didn't expect anything of that kind at all?

A. If he made it I guessed Williams would do the right thing with me; if he didn't, it was all right with me.

Q. What was your idea on that at that time—that he was to pay you back the money?

A. Sure! Pay me back the money whenever he could make it.

Q. Any interest?

A. I was interested in seeing Williams make a little money to pay his own debts that he had contracted working on that ground that I owned. I was inter-

(Testimony of Edwin Richards.)

ested in that way. I saw the man down and out, and I was willing to help him. I had the means to do it, and I gave him this money to go down there [195] and try to better himself.

Q. You already had on your books an account of six or seven hundred dollars against Williams, didn't you, that he owed you for working the lay before?

A. Six hundred and some odd dollars.

Q. Six or seven hundred dollars?

A. Something between six and seven hundred. That is against Williams and Johnston, against the firm.

Q. Out of this money, if Williams had gone down there and made twenty-five or thirty thousand dollars, what did you expect him to come back to you with?

A. That was all up to Mr. Williams, Mr. McGowan. I didn't stipulate a thing with Williams.

Q. You didn't expect a thing; is that right?

A. Williams told me he appreciated my kindness in giving him the money, and would do the right thing in return. Whatever Williams would do by me when he came back, if he made twenty-five thousand it was immaterial to me. I would be satisfied with whatever he would do.

Q. If he paid you your money back, you would be satisfied?

A. If he paid me my money back, I would be satisfied. He possibly would give me interest, anyway; and, if he had made more, possibly he would. I believed Williams would, but I hadn't bound him to anything.

(Testimony of Edwin Richards.)

Q. In other words, it was up to Williams to do what he liked; is that right?

A. I left that to Williams entirely.

Q. If he had made a hundred thousand dollars and hadn't given you a cent, you would not have sued him for an accounting? A. I couldn't do it; no.

Q. That is the way you felt about it when you started this man off? [196]

A. I wished he would have made it.

Q. Sir?

A. That is all. The best wish I wished him; I wished he had made it.

Q. You wrote all the letters to him that are in evidence here, did you not? A. Yes, sir.

Q. Is it not a fact that the money that you gave Williams at the time he left for the Iditarod was to be used for the mutual advantage of Mr. Williams and yourself?

A. That money was paid—that money was Williams'. I might benefit from it incidentally. I don't know. It was all up to how things turned out, and just the way Williams would do about it afterwards.

Q. Is it not a fact that on the day Williams left Hot Springs for Iditarod that the money you gave him was to be used for the mutual advantage of Mr. Williams and yourself?

A. Nothing said about that.

Q. Did you testify at the second trial of this case as follows (reads): "Q. You understood at that time, or it was in your mind, that the deal, this venture down there in which he used this money you

(Testimony of Edwin Richards.)

gave him was to be used for the mutual advantage of Mr. Williams and yourself?

A. No, sir, that was Mr. Williams' own look-out after he went down." Is that right?

A. I guess so.

Q. Sir? A. Yes, sir.

Q. Did you expect at that time that Williams was to give you something back for the use of this money?

A. If he made anything, I at least expected he would pay interest at least. It was all up to him. I am telling you I didn't stipulate with Williams to pay me anything back, no more than [197] I expected to get this money back and something for the use of it.

Q. Now, then, did you testify at the second trial (reads): "Q. But you had this understanding at the time as to both of you, as to this trip being for the mutual advantage of both of you at the time Williams left Hot Springs. Isn't that correct? A. I presume so." Was that your testimony at the last trial? A. Yes, sir.

Q. Then, that was the *understand* that you had at the time when Williams left; that that money was for the mutual advantage of both of you and to be used in that way.

A. I could not tell what would be the outcome of it. I hoped it would be to the advantage of both of us.

Q. You hoped it would be? A. Yes, sir.

Q. Now, when this letter came back from Williams advising you that he had deposited this money in the

(Testimony of Edwin Richards.)

American Bank of Alaska and had borrowed on a note signed by yourself and him the sum of \$3,500.00, did you notify the bank that that proceeding wasn't considered correct by yourself?

A. No, sir, I did not. I had nothing from the bank myself.

Q. Sir?

A. I had no notification from the bank myself.

Q. Did you notify the bank in any manner, in writing, or by word of mouth?

A. Not until January 2, 1912.

Q. That is a year and three or four months afterward?

A. When I got their first notification on December 28, 1911, I immediately wrote back denying it.

Q. I am not asking you about notification from the bank. I am asking you about the notification Williams got. You received a notification from Ed Williams at that time, which you [198] received in December, that he had gone to the bank and borrowed that money in your name.

A. I received his letter.

Q. On December 6th, 7th or 8th, 1910?

A. In December.

Q. Were you in Fairbanks during that winter, in December 1910-11? A. In Fairbanks?

Q. Yes, sir. A. What time in the winter?

Q. Any time.

A. I was not here, only in the fall, in September.

Q. I mean after December, 1910, and until April or May, 1911. A. I never was in Fairbanks.

(Testimony of Edwin Richards.)

Q. Were you in Fairbanks in the summer of 1911?

A. Yes, sir. I was in Fairbanks in September, 1911.

Q. Did you at that time notify the bank that your name had been improperly placed upon this note which they held?

A. I didn't know there was anything in the bank against me.

Q. Mr. Williams hadn't told you in the preceding December that your note was there, had he?

A. He told me that I had nothing at all in there; that I was all clear there, in April.

Q. I am talking about the testimony in this case. Did you yourself, when you came up here in December, 1911, and went into that bank to do business with them, ask them anything about that old note, or say anything to them about it?

A. No. I had no reason to say anything about it.

Q. You were in that bank of the plaintiff and doing business at that time?

A. I did business with them all that summer.

Q. You didn't ask any of the officers over there whether that matter had been straightened up?
[199]

A. I didn't know anything about it.

Q. You had received eight or ten letters from Williams about it?

A. Yes, and I notified Williams immediately that I didn't stand for that proposition; I wouldn't stand for it.

Q. That is, as far as you were notified by Williams.

(Testimony of Edwin Richards.)

A. Certainly. He is the only one that told me about it.

Q. You notified him of that in December, 1910?

A. Yes, sir.

Q. And in December, 1910, you want the jury to understand that you lost all interest in this matter; is that right? You had no further interest in it; is that right?

A. After I wrote Williams and received his reply, I didn't consider that I had anything to do with it; no.

Q. In the letter of April 4, 1911, Mr. Williams told you that the note had not been paid, did he not, in a letter Williams wrote to you on April 4, 1911? (Hands letter to witness.)

A. No, sir, I can't see it.

Q. I will read it to you then (reads): "I sold the half interest in the lay just enough cash down to pay the back interest on the note \$400." A. Yes.

Q. He told you that, didn't he—just enough to pay the interest?

A. He said to pay the interest on the note.

Q. You knew that the note wasn't paid, in April, 1911, didn't you?

A. I never knew the note was renewed, sir.

Q. You testified on yesterday, did you not, that you never heard a word about the second note?

A. I never heard a word about it.

Q. You did receive this letter from Williams along about the month of May, 1911, in which he said that he had realized [200] \$400 and paid this back in-

(Testimony of Edwin Richards.)

terest on the note.

A. Yes. That is there.

Q. Then you did know in April or May of 1911, when you received this notice, Defendant's Exhibit 2, one of your own exhibits—you did know there was a note at the bank, didn't you?

A. No, sir, I did not.

Q. You didn't understand it from that letter?

A. Nor sir, I did not.

Q. You didn't understand from that what that \$400 interest meant, did you?

A. I understood it was interest on a note. Yes.

Q. On what note? A. It didn't say.

Q. And you had no mortal idea what that meant when you received it; is that right?

A. The interest on the note?

Q. You didn't know what note, though?

A. No. That was the only note I heard of.

Q. You had heard about the bank note?

A. The note of October 6th.

Q. You had heard about that note, hadn't you?

A. Yes, sir.

Q. Now, you heard about the first note that this bank had, the plaintiff in this action. A. Yes.

Q. And you said a while ago that when you wrote him in December, you considered yourself through; is that right?

A. I told him that I wouldn't stand for any notes or anything else that he might have signed my name to and let me know as soon as possible if he had revoked the same.

(Testimony of Edwin Richards.)

Q. Then on April 4, 1911, he wrote you this letter that I hold in my hand. Yes, sir. [201]

Q. And he told you he had raised enough money to pay the interest on the note.

A. That is right.

Q. And you had only heard of one note from Williams? A. Yes, sir.

Q. You must have understood from this letter that he was talking about the bank note?

Mr. PRATT.—Which bank note?

Mr. McGOWAN.—The first bank note.

Mr. PRATT.—Yes.

Mr. McGOWAN.—Which is the note in suit to-day.

Mr. PRATT.—It is not. That is a misrepresentation.

Mr. McGOWAN.—By renewal.

The COURT.—Proceed.

Mr. McGOWAN.—Q. You understood that, didn't you?

A. I understood there was a note—that first note, yes, sir.

Q. You understood by this letter of April 4, 1911, that Mr. Williams wrote about some note that the bank had?

A. I presumed it was that note.

Q. Then you did hear about this note, or this controversy between the bank and Williams and yourself in April, 1911, didn't you, and that there was a note still due, from this letter; is that right?

A. Well, according to that, yes, sir.

Q. And you came to Fairbanks in that year, within

(Testimony of Edwin Richards.)

three or four or five months after you received this letter—you must have received this letter about May—came up here and went into that bank and never mentioned that note to Hurley or Bruning or any of the officers there; is that right?

A. That same letter tells that when this deed comes back, signed and sworn to, that I would be released of all obligations. [2011½]

Q. That same letter tells you that? A. Yes.

Q. That letter from Williams?

A. Yes, sir; the same letter.

Q. You didn't go to the bank when you were in there doing business and asked them, "Has Williams kept his agreement—has he released me?"

A. I don't think they asked me. I had no reason to go in there.

Q. No reason at all. You were through with the transaction? A. Why, certainly.

Q. You kept a set of books at Cache Creek in your business, did you not? A. Yes.

Q. You kept books there showing your transactions? A. Yes.

Q. Your account against Williams—Williams & Johanson—about the money they owed you in the lay, that was in your books? A. Yes, sir.

Q. That book shows how much they owed?

A. Yes, sir.

Q. You had a separate account there, too, for Williams, for some separate things that he owed you, didn't you? A. Yes, I have a personal account.

Q. You have a separate account against Williams?

(Testimony of Edwin Richards.)

A. Yes.

Q. Which shows on your books kept at Cache Creek how much Williams owes you? A. Yes, sir.

Q. About how much does he owe you?

A. I will have to see the book to see.

Q. About how much?

A. There is six hundred and some odd dollars there between the firm of Williams & Johanson.

Q. Then the private account, how much was that?

A. This money that he got to go down below.

[202]

Q. Is that on the books? A. Yes, sir.

Q. When did you put that on the books?

A. I put it down when he got it.

Q. How much did you put down?

A. There is \$2,500. Practically that, I think he got. There is \$42.00 for the man and the boat going down to Gibbon, and a little *credit* to him for some grub I had left there on Cache Creek.

Q. What is the heading of that account?

A. Williams.

Q. Williams, alone? A. Yes, sir.

Q. It doesn't say what it is for, or anything—the book doesn't? A. It shows that he got the money.

Q. You gave him \$2,500 in cash the day he left.

A. Yes, sir.

Q. You received advice of this \$3,500.00 note later from him, did you not? A. Received what?

Q. Received advice that he had signed your name to that \$3,500 note.

A. Yes, sir; I got that advice in a letter.

(Testimony of Edwin Richards.)

Q. And those two taken together, it makes \$6,000.

A. No, sir.

Q. Doesn't \$2,500 and \$3,500 make \$6,000?

A. It makes \$6,000.00. But I didn't count that in his account against him. I had nothing to do with that. That was his own business.

Q. You say in the spring of the year 1911 you had no conversation with Mr. Egler in which the following took place (reads): "We were talking about mining matter. He"—meaning you—"was mining at that time on Cache Creek, and I was mining on Tofty. And he wanted to know if I [203] didn't want to take up that proposition in the Iditarod." Did you have any conversation like that with Egler? A. No, sir. I never did.

Q. Is that the conversation that took place between Egler and yourself?

A. Not in that. No, sir, I did not.

Q. Did Egler in that same conversation ask you what it would cost, what the Iditarod proposition would cost? A. No, sir.

Q. Did you at that time say to him, "I am in about \$6,000"? A. I never did.

Q. Did you at that time say anything to Egler about a lay that you had got hold of down in the Iditarod country on Flat Creek?

A. No, I did not, that I remember. I can tell you this: That in general there were several people asked about Williams, what he was doing down there, and Egler might have asked me that, or a dozen other people, "What did Williams do down there?"

(Testimony of Edwin Richards.)

Q. You have always been very friendly with Egler? A. We are good friends.

Q. And are to-day? A. Yes, for all I know.

Q. At the present time you are partners in some mining ground in the vicinity of Hot Springs?

A. Yes, sir.

Q. No question about that?

A. No, not a thing. Mr. Egler made a proposition to me last summer himself.

Q. You had no conversation, such as he testified to in his deposition, with Mr. Egler at any time?

A. I did not. [204]

Q. When did you consider, Mr. Richards, or make up your mind in the year 1911 that Williams and yourself were through, and had nothing further to do with one another?

A. I didn't consider that I had anything to do with Mr. Williams' operations down there at any time.

Q. But you wrote him a lot of letters telling him what to do and advising him, didn't you?

A. I certainly have a right to do that.

Q. You did that? A. Yes.

Q. When did you stop losing your interest in him, and no longer advised him?

A. I never paid much attention to the proposition after I wrote him a few letters, and started at the time he got into this matter when he first got down there; after that I didn't.

Q. Sir?

A. After that I never wrote him until I got this letter, when I sent him back the deed of the property, in April.

(Testimony of Edwin Richards.)

Q. After you sent back that deed in April, did you consider that that closed all your dealings with Williams?

A. I considered that that finally closed it when he got the deed, and he should—(interrupted).

Q. You considered then that he had sold your interest, and that you were out of everything in the Iditarod; is that right? You were through?

A. I never considered myself in it at all, at no time.

Q. When you sent that deed back in April, you considered that wiped out all your connection with it.

A. I was doing that so that they could clear the thing down there, just for them; not that I considered myself in the thing at no time.

Q. You wrote, advising Mr. Williams, did you not, to be very [205] careful about his deals down there? A. I suppose I did, yes, sir.

Q. And said (reads): "Otherwise, we will be in lawsuits head over heels," didn't you?

A. I wrote him that.

Q. We will be in lawsuits head over heels?

A. I did not want to see Williams get into lawsuits, or get into any trouble whatever. If he did, he would be jeopardizing that money I gave him, and he would be up against it, and would be calling on me to pull him out.

Q. You did say to him, "We will be in lawsuits head over heels"?

A. If something would happen, yes, sir.

Q. What did you mean by "we"—Mr. Williams and yourself?

(Testimony of Edwin Richards.)

A. I meant myself. I am interested, so far as I furnished him with this money. And if Williams gets into trouble and jeopardizing this money, he is going to make a hollo and call on me to help him out.

Q. How could you get into trouble, if you had given this money to Williams and he was to use it and do with it as he pleased himself? How could you get into a lawsuit?

A. I wouldn't get into a lawsuit. It would be him that would get into a lawsuit.

Q. What?

A. I warned him not to get into anything.

Q. Did you testify at the last trial as follows (reads): "'Otherwise we will be in lawsuits head over heels.' Who did you mean by 'we'?" A. Well, I suppose I was included in there." Is that your testimony? A. Yes, sir.

Q. (Reading:) "Williams and yourself. Is that what you mean?" A. Yes, sir, so far as this money went. Q. By 'we' you mean Williams and yourself? A. I presume so." [206]

Q. How could you get into a lawsuit if you had given this man \$2,500 and told him to go away and not bother you any more about it and do as he pleased?

A. He could get into it, of course, in order to protect himself—this money he got would be jeopardized and he might lose it—he would come to me and hollo to me to help him out.

Q. Had he holloed to you at any time before to help him out? A. Not that I know of.

(Testimony of Edwin Richards.)

Q. And you were afraid he would hollo to you to help him out again?

A. It was natural that he would.

Q. That is what you meant when you sat down yourself and wrote a letter to Williams and told him, "We will be in lawsuits head over heels"; is that right—is that what you were thinking about?

A. In so far as he would get into any trouble with this money that I gave him.

Q. Sir?

A. So far as he would get into trouble with this particular money that I gave him.

Q. Hadn't he promised you, according to your own testimony, before he left that he would not go into any proposition down there unless the \$2,500 would carry him through? A. He did.

Q. Then, how could you be in fear of a lawsuit where "we will be in lawsuits head over heels," if he promised you that?

A. He may overlook something. He may get into something that looks clear, and there may be something behind it. [207]

Q. You say that you went to the telephone and rung up Tom Williams at Hot Springs?

A. Yes, sir.

Q. That was your telephone? A. Yes, sir.

Q. It was in the name of Richards & Williams, was it not? A. No, not then.

Q. It had been before that?

A. No. I guess it was afterwards.

(Testimony of Edwin Richards.)

Q. I am talking about just the day before Williams went away.

A. What do you mean—Tom Williams?

Q. The time you telephoned Tom Williams and asked him about that. When was that?

A. That was in the spring of 1910, I think.

Q. That was in your own house on Cache Creek? Is that right?

A. We were on Cache Creek. Yes.

Q. And this Williams here told you to go to the telephone and ring up Tom Williams and ask him about this ground.

A. I told Mr. Williams that Tom was on his way down to the Iditarod.

Q. Yes?

A. And he says, "Ask him if he will look up that proposition of Jack's down there when he gets out on the creek, on Flat Creek, on the Wildcat." I says, "All right. I will call Tom up."

Q. Yes. You testified yesterday that you did that for him, and that you had nothing to do with it.

A. For Ed Williams. Yes.

Q. You took no interest in it at all?

A. Certainly not, only he asked me to phone Tom.

Q. Why didn't you tell him to go and phone himself?

A. Because it would cost him something to use the phone.

Q. Was he working for you? [208]

A. I don't know. I think at the time. Anyway, I was talking to Tom when he asked me that.

(Testimony of Edwin Richards.)

Q. You were talking with Tom Williams.

A. Tom was at Hot Springs.

Q. You were talking with Tom Williams over the telephone? A. I think I was at the time.

Q. You discussed this matter with Mr. Aitken, did you not, over the telephone in the spring of 1911—some of the matters connected with this Iditarod affair?

A. Mr. Aitken went through Tofty there on the way up the river one day, and when I got down in the evening someone told me, if I remember right, that he had left a call or had inquired for me; that was it, I think.

Q. Yes, sir?

A. And he was at the springs that night, at Hot Springs.

Q. Did you speak to him?

A. I called the hotel on the phone, and got Tom Aitken on the phone.

Q. And you discussed this Williams proposition with Aitken, did you not?

A. I asked Aitken if he had inquired for me. He said, "Yes," if that was Richards. I said, "Yes." "Well," he says—he told me that Williams had bought an interest, I think a half interest in a lay in the Iditarod. I asked him how the camp looked, and things like that, in the ordinary way, and he told me things, and he said, "What about a note that Williams gave me, due the 1st of June"—

Q. Yes. For a boiler, wasn't it?

A. For a boiler, yes. I told him I didn't know a

(Testimony of Edwin Richards.)

thing about it; what did I know about that!

Q. Didn't you tell Aitken at that time that you had not heard [209] as yet about that?

A. I hadn't heard a word from Williams at all in the matter.

Q. You didn't tell Aitken that you didn't owe him; that he had no business to get it, did you?

A. That what?

Q. That you didn't owe that money. "Why should you telephone me about it?" You didn't tell him that, did you?

A. I was not talking that way to the man; no.

Q. He had called up and asked you to pay this note, hadn't he?

A. "How about this note?" I didn't know anything about the note he was talking about. I had nothing to do with the note.

Q. He told you it was a note for the boiler that Williams had bought in connection with the lay?

A. Yes. But what did I have to do with that?

Q. Did you tell Tom Aitken that? A. Sure!

Q. Didn't you, as a matter of fact, tell Tom Aitken that you had not heard from Williams yet, and couldn't say anything about it?

A. I says, "I have not heard a thing from Williams. I don't know a thing about it."

Q. That is what you said to him?

A. That is what I said to him, as far as I can recollect.

Q. You talked with Mr. Hurley in the winter of 1912, did you, here in Fairbanks? A. Yes, sir.

(Testimony of Edwin Richards.)

Q. And he told you that maybe that lay down there was good. Is that right?

A. Yes. He told me he thought that lay down there was still held; that some of the boys were still holding it, and he would look it up if he went down there that summer. He would go down and see if he could get something out of it. [210]

Q. He also told you that he would put the notes he claimed to have against you in the hands of his attorneys?

A. I don't remember him saying that at all.

Q. He did go down that year, did he not?

A. I seen in the papers that he went down.

Q. But he didn't take any action against you until about the 1st of September?

A. About the first of September, or August, somewhere there.

Q. And you saw him in April?

A. I saw Mr. Hurley in April. I saw him twice. The day before I left for down there, he called me in the office, and he said he was going down there and look this proposition up; that he thought that some of them that were holding that lay were still good, and he might be able to get something out of it. I said, "That is all right. That is nothing to me."

Mr. McGOWAN.—That is all.

Redirect Examination.

(By Mr. PRATT.)

Q. Mr. Richards, do I understand you to say that you were in Fairbanks in September of 1911?

A. Yes. Let's see—

(Testimony of Edwin Richards.)

Q. What? A. Wait until I memorize that.

Q. Mr. McGowan asked you here if you were here, and you said you thought you were here in the summer of 1911, and you went into the bank and didn't say anything about the note or notes. A. I know.

Q. Were you here?

A. I have got to think that over. I can't recollect if I was up here for anything or not.

Q. Williams was in the Iditarod, and gone in there the fall before? [211]

A. Let me think what I was doing that summer. I was working on Cache Creek. I have been up here so many times in the fall. To tell you the truth, I can't say for sure whether I was or not.

Q. Are you sure you were at all in 1911? You were here in September, 1910?

A. Yes, I know I was up here then.

Q. You went back and you lived there at home?

A. Yes.

Q. That winter? A. Yes.

Q. And you mined that summer there, didn't you?

A. Yes.

Q. Did you that summer come here over the water at any time?

A. No. I know that summer I went down the Yukon River when I went out. To tell you the truth right now, I can't place myself up here that fall, come to think of it. I may have too, but I will have to look up something to find out.

Q. When McGowan was examining you, you seemed to think so.

(Testimony of Edwin Richards.)

A. I took it that I was up here. I wasn't here, if I remember right. I know and realize that now.

Q. What note, in connection with this business, did you ever hear of or know anything about?

A. What was the date of it? The note of October 26th or 6th.

Q. It is October 6th. A. 6th.

Q. What year? A. 1910.

Q. You never did hear of this note of February, 24, 1911, that was sued on?

A. No, I never did hear until I got that notification in San Francisco on December 28th, and on January 2d I immediately replied and repudiated that demand for that note, for payment of that note.

Q. And you did the same thing again verbally when you were coming through here. [212]

A. The same thing here in Fairbanks personally to Mr. Hurley sometime in April.

Q. When you were being cross-examined you spoke of Egler as your partner. Do you mean that at any time you were mining copartners with him, operating mines? A. No.

Q. What are your relations with him, joint owners, co-owners, or what are they?

A. We are interested in some ground together.

The COURT.—Haven't you been over that?

Mr. PRATT.—He used the word "partners," and I want to show what he means by that.

Mr. CLARK.—We admit that he meant that they are just jointly interested in some mining property.

A. Not in working ground, but we happen to own

(Testimony of Edwin Richards.)

interests in different claims.

Mr. PRATT.—Q. When you were talking with Aitken over the phone did he give you any information as to who had signed the note he was talking about?

A. No, he didn't tell me. He said that Williams had bought a boiler, and he had a note. He didn't say it was a note from Williams or what it was.

Q. You didn't find out from him who signed that note. A. I did not. No.

Q. You found out since who signed it?

A. Williams said in that letter that he signed the note to Aitken.

Q. You heard his testimony that he signed the note himself, didn't you? A. Yes, sir.

Mr. CLARK.—We object as not proper redirect examination.

(Objection sustained.) [213]

Mr. PRATT.—That is all.

Recross-examination.

Mr. McGOWAN.—Q. After Mr. Pratt went through and explained where you were in 1911, you have made up your mind that you were not in Fairbanks in September, 1911; is that right?

A. I don't want to say for sure either way. I was going to look up and see if I have any note of any deal.

Q. You are not sure of all the testimony you gave me awhile ago on cross-examination about what happened in September, 1911, at the present time. Is that right? A. September, 1911?

(Testimony of Edwin Richards.)

Q. Yes, sir. A. Up here?

Q. Yes, sir, at Fairbanks?

A. Did I refer to any incident?

Q. You said you were here?

A. Yes, but I am not so sure whether I was or not.

Q. That is all you have to say on that subject?

A. Until I can find out for sure.

Mr. McGOWAN.—That is all.

Mr. PRATT.—That is all.

Mr. CLARK.—I would like to call Mr. Heilig at this time.

[Testimony of A. R. Heilig, for Plaintiff.]

A. R. HEILIG, a witness called in behalf of plaintiff, after being sworn, testified as follows, to wit:

Direct Examination.

(By Mr. CLARK.)

Q. Your name is A. R. Heilig? A. Yes.

Q. You are a practicing attorney, and have been for a number of years. A. Yes.

Q. Tried a good many lawsuits, and know the prevailing rates and charges and fees in such matters?

A. Yes. **[214]**

Q. This is an action instituted by the American Bank of Alaska against Mr. Richards and Mr. Williams to collect a note given in the Iditarod in February, 1911, for the sum of \$3,500. The issue is, that Mr. Richards claims that at the time the note was signed by Mr. Williams in the firm name of Richards & Williams that Mr. Williams had no authority to sign it, and that he, Richards, was not

(Testimony of A. R. Heilig.)

a partner; and he has resisted the payment of the note on that ground. The testimony has shown that there is \$1295 due as interest. This is the third trial of the case; the first trial lasting some three days, and the second trial a little longer, and this is the third day of this trial, although it has not lasted quite that long. I might also add there was an attachment levied in the first instance, when the case was instituted. From your knowledge and experience here, what would you say would be a reasonable attorney's fee for plaintiff's attorneys for instituting and prosecuting the suit to completion?

A. Including the services you have related that have been performed at the other trials?

Q. Yes.

A. A thousand dollars.

Mr. CLARK.—That is all.

Cross-examination.

Mr. PRATT.—Q. You are the general attorney for the First National Bank, and have been for some years. A. Yes.

Mr. PRATT.—That is all. [215]

[Testimony of C. J. Hurley, for Plaintiff (Recalled
—Cross-examination).]

C. J. HURLEY, recalled for further cross-examination, testified as follows, to wit:

Mr. PRATT.—Q. I will ask you to state if, at the second trial, you didn't give this testimony (reads):

“Q. State, as near as you can, what the conversation was at that time.— A. He stated that the money

(Testimony of C. J. Hurley.)

that he had deposited was Dick Richards', and that Richards had sent him down there to buy interests or get into something if he could, and that they were to be partners, and that he wanted to keep a record of the money such that he could account to Richards for the money; and he asked my advice how to open the account and how to keep it." I will ask you to state if you didn't give that answer at the second trial. A. Yes, sir.

Mr. PRATT.—That is all.

Mr. McGOWAN.—That is all.

Mr. MARQUAM.—Is it admitted that there has been no default entered against Mr. Williams?

Mr. McGOWAN.—There is no default entered against Mr. Williams. We never had a formal default entered.

Mr. MARQUAM.—That is what I want.

Mr. CLARK.—In order to straighten this matter out, I ask that default be entered against Williams, he having been served in the month of September, 1912, at the town of Tofty, on the 5th day of September, 1912, and no answer or appearance having been filed on behalf of Mr. Edward Williams, we ask that his default be entered.

Mr. MARQUAM.—All we want to show is that up to the present time, they have never entered a default against Mr. Williams. It is admitted that no default has ever been entered against Mr. Williams up to this time?

Mr. CLARK.—Yes.

Mr. PRATT.—We rest.

Defendant Richards rests. [216]

[**Testimony of C. J. Hurley, for Plaintiff (in Rebuttal).**]

C. J. HURLEY, called as witness for plaintiff in rebuttal, heretofore sworn, testified as follows:

Direct Examination.

(By Mr. McGOWAN.)

Q. Tell us the conversation that you had with Richards that he related as having taken place in the spring of 1912.

Mr. MARQUAM.—Which one? Where?

Mr. McGOWAN.—That he related on the witness-stand; at Fairbanks in the bank.

A. My conversation with Richards was in the private office in the American Bank over there, and he repudiated the note, saying he was not responsible, and wouldn't pay it. And I told him at the time this; that if that was his final decision in the matter, I would have to turn it over to our attorneys for suit and collection.

Q. At that time did you have the note?

A. Yes, sir.

Q. And that is the note in suit in this action, is it not? A. Yes.

Q. That was in what month?

A. In the spring of 1912. I couldn't say as to the time. It was just after he came in over the trail.

Q. Go on with the rest of the conversation.

A. That was decided upon at that time, that I would bring the suit in this court.

Q. Yes, sir?

A. Then, afterwards, I told Mr. Richards that I

(Testimony of C. J. Hurley.)

was going down to Iditarod—a few days later—and I wasn't sure about the lay down there having been abandoned, but I felt quite certain that it was. However, I would look the matter up when I got down there, and, if there was a chance to realize [217] anything out of it, on account of the Guggenheims going in there and buying the lay, that I would use my best efforts to do so; and, in case I accomplished anything, I would let him know.

Q. What did you find when you got there?

A. The lay had been abandoned in the fall of 1911, and forfeited back to the owners.

Q. Then you refrained from commencing action until you got back in August. A. Yes.

Q. Or September. A. Yes, sir.

Mr. McGOWAN.—That is all.

Mr. PRATT.—That is all.

Mr. McGOWAN.—That is our case. We rest.

Testimony closed. [218]

The above and foregoing contains all the evidence, oral and written, that was introduced and heard at the trial of the case.

At the close of the testimony, the case was argued by the attorneys for plaintiff and the attorneys for answering defendant Richards, whereupon the Court instructed the jury orally as follows, the same being all the instructions given the jury by the Court: [219]

[Caption and Title.]

Instructions [of Court to Jury].

Gentlemen of the Jury:

In this action, in the complaint plaintiff alleges that it is incorporated under the laws of the State of Washington, and that it is doing business in this division of Alaska; and that the defendants Edward Williams and Edwin Richards compose a mining copartnership engaged in business under the firm name and style of Richards & Williams. That in or about the month of September, 1910, plaintiff loaned the defendants a sum in excess of thirty-five hundred dollars, and thereafter, on or about February 24, 1911, defendants, in consideration of the moneys theretofore loaned them by the plaintiff, made, executed and delivered to the plaintiff a promissory note payable on or before July 1, 1911, with interest at the rate of 12 per cent per annum until paid, and also providing that in case action should be brought to collect the note that the defendants would pay such additional sum as attorneys' fees as the court might adjudge reasonable. The plaintiff also alleges that the note is past due, and that no part thereof has been paid, and that a reasonable sum to be allowed it as attorney's fee is seven hundred and fifty dollars; that a second cause of action, upon an overdraft, contained in the complaint has been dismissed, and which you will not consider. [220]

This complaint the defendant Richards has answered, admitting the incorporation of the plaintiff, but denying each and every other allegation con-

tained in the Complaint.

The defendant Williams has not answered. And the only issues, therefore, to be determined by you are those between the plaintiff and the defendant Richards.

In a civil case it is incumbent upon the plaintiff to prove by a preponderance of evidence each and every material allegation of its complaint which has been denied by the defendant.

On the part of the plaintiff it is contended that in the latter part of September, 1910, in the Hot Springs Precinct, in this division, the defendants Williams and Richards entered into an agreement of partnership whereby Richards agreed to advance a certain amount of money for the use of such partnership, and the defendant Williams agreed to proceed to the Iditarod and to investigate conditions there, and that it was also agreed between them that if it should seem advisable to said Williams, after arriving in Iditarod and after such investigation, that he should purchase an interest in a certain lay or lease upon a mining claim on Flat Creek. It is further contended by the plaintiff that Williams did proceed to Iditarod pursuant to such agreement and did purchase for said partnership an interest in the lay or lease on Flat Creek, and, for the purpose of making such purchase, did borrow the sum of thirty-five hundred dollars from plaintiff, and, on or about October 6, 1910, made and delivered to plaintiff a promissory note therefor, signed by Williams in the name of Williams & Richards.

Plaintiff further contends that Richards was in-

formed by Williams of this transaction, and that he ratified the same, and that thereafter on or about the 24th day of February, 1911, the defendant Williams executed to the plaintiff the note which has [221] been introduced in evidence, bearing date on that day, and that the same was given for the money theretofore loaned, and in renewal of the note made on or about October 6, 1910, and that this note was executed as the note of Williams & Richards, and that Williams was authorized to execute such note on behalf of the defendant Richards.

On the part of the defendant Richards it is contended that he never entered into any partnership agreement of any kind with Williams, and never authorized him to borrow any sum of money, and that he never ratified any of the acts of Williams in borrowing money from the plaintiff, and that Williams was without authority to execute on behalf of Richards either the note of October 6, 1910, or the one of February 24, 1911.

You should consider, therefore, whether or not the defendants Williams and Richards entered into any partnership agreement as alleged by the plaintiff, and whether or not, if you find that they did enter into such agreement, it was contemplated thereby that the said Williams should have authority to borrow money for the purposes of such partnership, and whether or not the moneys borrowed by him from the plaintiff were for such purposes, if you find that a partnership had been formed theretofore between Williams and Richards.

And you are instructed that if you find from the

evidence in this action that such partnership was formed with the defendants, and that it was contemplated thereby that Williams should have authority to borrow money for the partnership use, and that such sum of money was borrowed from the plaintiff by Williams for such partnership purpose, and the notes above mentioned given to plaintiff therefor, then your verdict should be for the plaintiff. [222]

A mining partnership exists where two or more persons co-operate in working mining property. Mere ownership as tenants in common, either in the mining ground itself or of a leasehold interest thereon, is not sufficient to constitute a mining partnership.

Where such copartnership is shown to exist, each partner has power to bind his copartner by dealings on credit and the giving of promissory notes for the purpose of working the mine where it appears to be necessary or usual in the management of the business; but one such copartner has no implied power or authority to borrow money and sign the firm name to a promissory note as evidence of such loan where the money is to be, and is, used in purchasing mining ground or interests, or assignments of leases, by reason of the mining partnership relations; and, if he does so without the knowledge or consent of his copartners, they are not liable thereon by reason of the copartnership relation.

In case you should find that such copartnership was not formed between the defendants, or that Williams was not authorized to borrow money for partnership purposes, or that the money loaned by the plaintiff was not for partnership purposes, then you

should consider whether or not the defendant Richards was informed of the transactions between Williams and the plaintiff, and whether or not the defendant Richards, after having been fully informed of such transactions, ratified the same.

You are instructed that if you find that the defendant Richards was fully informed of the transactions between the plaintiff and Williams, and that said sum of money was loaned by the plaintiff to Williams, for the use of Williams & Richards, and that on or about October 6, 1910, the defendant Williams executed the note to the plaintiff for said sum of money and signed thereto the name of Richards or the firm name of Williams & Richards, and that [223] Richards, having been fully informed of these transactions, ratified the same, that then such ratification of the acts of Williams by Richards would have the same effect as if authority to perform such acts had previously been given by Richards to Williams. And, if you find that said acts of Williams were so ratified by Richards, then your verdict should be for the plaintiff, provided you also find that the note in issue was given as a renewal of the note of October 6, 1910, and in consideration of the loan originally made.

You are instructed that to constitute a copartnership it is not necessary that there be any formal written agreement between the parties.

You are instructed that if you find from the evidence in this case that subsequent to the time when Williams borrowed from the plaintiff herein the monies for the recovery of which this action was brought, he communicated fully such facts to the de-

fendant Richards, and informed him that the said monies so borrowed in the name of Richards & Williams were to be used in their joint enterprise, and that said Richards did not, on receipt of such information and within a reasonable time, notify the plaintiff in this action that he was not a partner of defendant Williams, or repudiate the acts of Williams, that such failure to so notify the plaintiff may be considered by you as evidence of ratification of the acts of Williams by Richards.

You are instructed that it was not necessary for Williams to have authority to bind Richards in the giving of the note sued on in this action before the execution of the same, provided you find that Richards thereafter ratified the acts of Williams.

And you are further instructed that such ratification need not be expressed in writing. But his failure to disaffirm the acts [224] of Williams within a reasonable time, or to repudiate the actions of Williams and notify the plaintiff thereof in this action within a reasonable time, may be held to constitute a ratification of the acts of defendant Williams so that the defendant Richards will then become liable for such indebtedness. Of course, an act of ratification, either by failure to protest, or by express affirmative acts, implies that the party had full knowledge of such acts as had been done by his agent; and, unless he had such knowledge, he would not be held to have ratified them by any failure to act or disaffirm them. Ratification means a confirmation of an act previously done by another.

You are instructed that the mere declaration or representation of one person that another is his min-

ing partner, or that he is that other's agent with authority to sign promissory notes by reason of such copartnership, not made in the presence of such other party, is not evidence of a mining copartnership or agency as against such other person to be bound thereby.

You are instructed that no authority in writing is necessary to authorize another to sign his name to a note, provided the authority is given in some way, or provided the acts of the party so signing another's name to the note are ratified by that other afterwards with full knowledge of what has been done.

And in this case if the note was signed in the name of Richards & Williams with the intention on the part of Williams to bind both parties, and he either had such authority from Richards beforehand, or if Richards, with full knowledge of what had been done, ratified such act afterwards either by affirming the same or by failing to notify the payee of the note that the same was signed without his authority, within a reasonable time, then he may be held to have been bound in the same manner as if such authority had been given in writing beforehand. [225]

You are the sole judges of all questions of fact, and of the effect of the evidence, and the weight to be given to the testimony of witnesses. But your power in this respect is not arbitrary, and is to be exercised by you with legal discretion and in subordination to the rules of evidence as given to you in these instructions.

In determining the credit you will give to a witness, and the weight and value you will attach to his testimony, you should take into account his conduct

and appearance upon the witness-stand; the interest he has, if any, in the result of the trial; the motive he has in testifying, if any is shown; and his relations to, or feeling for or against any of the parties to the action; the probability or improbability of his statements; and the opportunity he had to observe and to be informed as to matters respecting which he has given testimony before you; and the inclination he evinces in your judgment to speak the truth, or otherwise, as to matters within his knowledge.

It is your duty to give to the testimony of each and all of the *witness* appearing before you such credit as you consider the same justly entitled to receive.

In this connection you are instructed that evidence is to be estimated, not only by its intrinsic weight, but also according to the evidence which it is within the power of one side to produce, and of the other to contradict. And, therefore, if the weaker and less satisfactory evidence has been offered, when it appears that stronger and more satisfactory evidence was within the power of the party offering the same, then the evidence so offered should be viewed with distrust.

You should consider no evidence sought to be introduced, but excluded by the Court, nor should you consider any evidence stricken out by the Court, nor should you take into consideration [226] in making up your verdict any knowledge or information known to you not derived from the evidence given by the witnesses on the witness-stand, or legally deducible therefrom.

Whatever verdict is warranted by the evidence, under the instructions of the Court, you should re-

turn, as you have sworn so to do.

You are not bound to find a verdict in conformity with the declarations or testimony of any number of witnesses when the evidence does not produce conviction in your minds, as against a lesser number of witnesses, or against a presumption or other evidence which is satisfying to your minds.

You are also instructed that a witness wilfully false in one part of his testimony **may** be distrusted in other parts of his testimony.

There is some evidence in this case as to oral admissions by the parties to the cause, and you are instructed that, owing to the infirmity of the human mind, and the inability of a witness to repeat the exact language used by a person alleged to have made such oral admissions, and to understand it correctly, and to repeat it with all its intended meaning, you are to view the evidence as to such oral admissions with caution. But, if you shall find and believe that such oral admissions were actually made by the person alleged to have made them, you should consider them as candidly and fairly as other evidence in the case, and give them weight accordingly.

If you find that any actual notice was received by the plaintiff from the defendant Richards that he was not a copartner, or would not be bound by what had been done, the manner in which it was communicated to the plaintiff would not be material, whether it came directly or indirectly. [227]

Two forms of verdict will be handed to you; one finding for the plaintiff for the amount of the note and interest, and also such attorney's fee as may be found by you, the other finding for the defendant; which-

ever one you unanimously agree upon you will sign by your foreman and return into court. You will take with you the pleadings, and such exhibits as were admitted in evidence.

Given March 26, 1914.

Whereupon, in the presence of the jury and before the jury retired for deliberation, the answering defendant excepted to portions of the oral charge given by the court to the jury as follows: [228]

[Exceptions of Edwin Richards to Instructions of Court to Jury.]

[Caption and Title.]

The answering defendant Edwin Richards excepts to portions of the charge of the Court to the jury as follows:

I.

Answering defendant excepts to that part of the charge wherein the Court assumed to state the issues tendered by the plaintiff, and its contention in connection therewith, as follows:

“On the part of the plaintiff it is contended that in the latter part of September, 1910, in the Hot Springs Precinct in this division, the defendants Williams and Richards entered into an agreement of partnership whereby Richards agreed to advance a certain amount of money for the use of such partnership, and the defendant Williams agreed to proceed to the Iditarod and to investigate conditions there, and that it was also agreed between them that if it should

seem advisable to said Williams, after arriving in Iditarod and after such investigation, that he should purchase an interest in a certain lay or lease upon a mining claim on Flat Creek. It is further contended by the plaintiff that Williams did proceed to Iditarod pursuant to such agreement and did purchase for said partnership an interest in the lay or lease on Flat Creek, and, for the purpose of making such purchase, did borrow the sum of thirty-five hundred dollars from plaintiff, and, on or about October 6, 1910, made and delivered to plaintiff a promissory note therefor, signed by Williams in the name of Williams & Richards.

Plaintiff further contends that Richards was informed by Williams of this transaction and that he ratified the same, and that thereafter on or about the 24th day of February, 1911, the defendant Williams executed to the plaintiff the note which has been introduced in evidence, bearing date on that day, and that the same was given for the money theretofore loaned, and in renewal of the note made on or about October 6, 1910, and that this note was executed as the note of Williams & Richards, and that Williams was authorized to execute such note on behalf of the defendant Richards."

for the reason that the same is inaccurate, and no such claim was [229] made or advanced by the plaintiff; that no amount of money was mentioned as between the answering defendant and Edward Williams other than the twenty-five hundred dollars,

and there was nothing said between either of them about borrowing more money for any purpose from any bank or anybody else, as indicated by said opening statement. And the same is further misleading for the reason that it confuses the note of October 6, 1910, with the one of February 24, 1911 upon which this action is based.

II.

The answering defendant excepts to that part of the charge which reads as follows:

“You should consider, therefore, whether or not the defendants Williams and Richards entered into any partnership agreement as alleged by the plaintiff, and whether or not, if you find that they did enter into such agreement, it was contemplated thereby that the said Williams should have authority to borrow money for the purposes of such partnership, and whether or not the monies borrowed by him from the plaintiff were for such purposes, if you find that a partnership had been formed theretofore between Williams and Richards.”

for the following reasons: That the same is misleading in that it refers to a general partnership between Williams and Richards instead of a mining copartnership as set forth in the plaintiff's complaint; and for the further reason that it is not based upon any evidence in the case, and especially that part of it that authorizes the jury to inquire whether any agreement between them contemplated the borrowing of money for partnership purposes, and whether or not monies borrowed from the plaintiff were used for such purposes.

III.

Said answering defendant excepts to that part of the charge which reads:

“You are instructed that if you find from the evidence in this action that such partnership was formed with the defendants, and that it was contemplated thereby that Williams should have authority to borrow money from the partnership use, and that such sum of money was borrowed from the plaintiff by Williams for such partnership purpose, and the notes above mentioned given to plaintiff therefor; then your verdict should be for the plaintiff,” [230]

for the reason that the same is misleading, and not based on any issue tendered by the complaint or any evidence introduced upon the trial.

IV.

Said answering defendant excepts to that part of the charge which reads:

“In case you should find that such copartnership was not formed between the defendants, or that Williams was not authorized to borrow money for partnership purposes, or that the money loaned by the plaintiff was not for partnership purposes, then you should consider whether or not the defendant Richards was informed of the transactions between Williams and the plaintiff, and whether or not the defendant Richards, after having been fully informed of such transactions, ratified the same.

You are instructed that if you find that the defendant Richards was fully informed of the

transactions between the plaintiff and Williams, and that said sum of money was loaned by the plaintiff to Williams for the use of Williams & Richards, and that on or about October 6, 1910, the defendant Williams executed the note to the plaintiff for said sum of money and signed there-to the name of Richards or the firm name of Williams & Richards, and that Richards, having been fully informed of these transactions, ratified the same, that then such ratification of the acts of Williams by Richards would have the same effect as if authority to perform such acts had previously been given by Richards to Williams. And, if you find that said acts of Williams were so ratified by Richards, then your verdict should be for the plaintiff, provided you also find that the note in issue was given as a renewal of the note of October 6, 1910, and in consideration of the loan originally made.”

for the reason that the same is misleading, is not based upon any issues made by the pleadings in the case, is not applicable to any theory of the case made by the pleadings, and is not based upon any evidence introduced or heard at the trial.

V.

The answering defendant excepts to that part of the charge which reads:

“You are instructed that if you find from the evidence in this case that subsequent to the time when Williams borrowed from the plaintiff herein the monies for the recovery of which this action was brought, he communicated fully such

facts to the defendant Richards, and informed him that the said monies so borrowed in the name of Richards & Williams were to be used in their joint enterprise, and that said Richards did [231] not, on receipt of such information within a reasonable time notify the plaintiff in this action that he was not a partner of defendant Williams, or repudiated the acts of Williams, that such failure to so notify the plaintiff may be considered by you as evidence of ratification of the acts of Williams by Richards."

for the reason that the Court here singles out a vein of evidence and tells the jury that they may consider the same as an act of ratification, casting a duty upon Richards to notify the bank of his repudiation of Williams' actions in signing his name to the paper, whereas in law it was not his duty to notify the bank, but the bank's duty to notify him of Williams' act in signing his name to the note in suit, and thus give him the opportunity to affirm or disaffirm the conduct of Williams.

VI.

The answering defendant excepts to that part of the charge given in this language:

"You are instructed that it was not necessary for Williams to have authority to bind Richards in the giving of the note sued on in this action before the execution of the same, provided you find that Richards thereafter ratified the acts of Williams.

And you are further instructed that such ratification need not be expressed in writing. But

his failure to disaffirm the acts of Williams within a reasonable time, or to repudiate the actions of Williams and notify the plaintiff thereof in this action within a reasonable time, may be held to constitute a ratification of the acts of defendant Williams so that the defendant Richards will then become liable for such indebtedness. Of course, an act of ratification, either by failure to protest, or by express affirmative acts, implies that the party had full knowledge of such acts as had been done by his agent; and, unless he had such knowledge, he would not be held to have ratified them by any failure to act or disaffirm them. Ratification means a confirmation of an act previously done by another."

for the reason that the Court here instructs the jury upon a theory of the case not developed by the pleadings or made by the issues in the case, and singles out a vein of supposed evidence and declares the force and effect that the jury should give thereto and instructs them with reference to something that was not disclosed by any evidence in the case. [232]

VII.

The answering defendant excepts to that part of the charge which reads:

"You are instructed that no authority in writing is necessary to authorize another to sign his name to a note, provided the authority is given in some way, or provided the acts of the party so signing another's name to the note are ratified by that other afterwards with full knowledge of

what has been done. And in this case if the note was signed in the name of Richards & Williams with the intention on the part of Williams to bind both parties, and he either had such authority from Richards beforehand, or if Richards, with full knowledge of what had been done, ratified such act afterwards either by affirming the same or by failing to notify the payee of the note that the same was signed without his authority, within a reasonable time, then he may be held to have been bound in the same manner as if such authority had been given in writing beforehand."

for the reason that the same is not within any of the issues made by the pleadings, is upon an entirely different theory from the one tendered by the plaintiff in his complaint, is not based upon any evidence introduced by either party, and is misleading.

Taken by the answering defendant Edwin Richards in open court in the presence of the jury and after the instructions had been read to the jury on the 26th day of March, 1914.

F. E. FULLER,
District Judge. [233]

[Special Instructions Requested by Defendant Richards.]

Special Instructions No. 2 Requested by Answering Defendant Richards:

II.

The Court instructs the jury that a mining partnership can only exist where several parties co-

operate in working mining property; mere ownership as tenants in common, either of the mining ground itself or a leasehold thereon, not being sufficient.

Where a mining copartnership is shown to exist within the definition above given, each partner has power to bind his copartners by dealing on credit and the giving of promissory notes for the purpose of working the mine, where it appears to be necessary or usual in the management of the business; but one mining copartner has no implied power or authority to borrow money and sign the firm name to a promissory note as evidence of such loan, where the money is to be and is used in purchasing mining ground or interests therein or assignments of leases thereon, and if he does so without the knowledge or consent of his copartners, they are not liable thereon.

Modified and given.

Applying the law as given above to the testimony in this case, I charge you that if you find from the testimony that no mining copartnership existed between the defendants Edward Williams and Edwin Richards on the 24th day of February, 1911, the date of the note which is the subject of this action; or if you find that they were on and before said day such copartners, but that the money evidenced by the said promissory note was, on or before that date and without the knowledge or consent of the defendant Edwin Richards, borrowed by the defendant Edward Williams from the plaintiff bank for the purpose of being used in the purchase of an interest in a lease on Flat Creek in the Iditarod country, and that said money

was so used, then in either event the defendant Edwin Richards is not liable upon the said [234] note, unless afterwards, with full knowledge of all the material facts connected therewith, he ratified the making and signing of the said note by the said Edward Williams.

The word "ratification" means a confirmation of a previous act done by another.

Refused.

Special Instruction No. 3, Asked by Defendant Richards.

III.

The Court instructs the jury that the naked declaration or representation of one person that another person is his mining partner, or that he is that other's agent with authority to sign promissory notes by reason of such copartnership, is not evidence of a mining copartnership or agency, as against such other person.

Modified and Given.

Applying the foregoing rule of law to the testimony in this case, if you find therefrom that on or about the 6th day of October, 1910, at Iditarod City and at the time the note of that date for \$3,500.00 was signed by the defendant Edward Williams in the name of "Richards & Williams" as shown by Plaintiff's Exhibit "5," the said Williams declared and represented to C. J. Hurley, manager of the plaintiff bank, that he and the defendant Edwin Richards were mining copartners, and for that reason he was authorized to borrow money and sign the firm name "Richards & Williams" to a promissory note for the

amount of money so borrowed, then I charge you that, under such circumstances, the said Hurley, acting for said bank, had no legal right to rely solely on such declaration or representation, and if he did so it was at the peril and risk of the plaintiff bank. Under the conditions stated above, it would have been the duty of the officers of the bank to make other and independent inquiries as to the truth of the statements made by Williams; and, if you find from the evidence that the said officers failed to make such inquiries, and that Williams was not at the time a mining copartner with Richards [235] and was not authorized to sign the note, the bank must bear the loss, if any, and not the defendant Edwin Richards.

Refused.

The Court further instructs the jury that all that is said above with reference to the note, Plaintiff's Exhibit "5," applies with equal force to the note, Plaintiff's Exhibit "6," made the basis of this action and copied in the body of the complaint, so far as the liability of the defendant Edwin Richards is concerned, growing out of the signature thereon "Richards & Williams."

The note in action (Plaintiff's Exhibit "6") is also signed by individual names as follows: "Edward Williams, Edwin Richards by Edward Williams, his attorney in fact." With reference to such signatures, you are instructed that as the name of the defendant Edwin Richards purports on the face of the note in action to have been signed by Edward Williams under the authority of a power of attorney, but the evidence conclusively shows that he had no power

of attorney or other written authority to sign said note for defendant Richards, it follows that the plaintiff cannot recover against said Richards by reason of such individual signatures unless you should further find from a preponderance of the evidence that the defendant Edwin Richards, after full knowledge of all the material facts connected with the signing of said note, ratified the action of the said Edwin Williams in the execution and delivery thereof.

Refused.

Special Instruction No. 4 Asked by Defendant Richards.

IV.

Where a promissory note is signed by one person for another as that other's attorney in fact, as the note copied in the complaint was, the one taking such note is put on his guard by the form of the signature and is bound to inquire whether the person so assuming to sign for such other in fact held a power of attorney or other written authority to so act, and if it turn out that he did not have such written authority the note is void [236] as against such other.

Refused.

Applying the foregoing rule of law to the testimony in this case, if you find from the evidence that the defendant Williams on February 24, 1911, did not have a power of attorney or other written authority from the defendant Richards authorizing him to sign the name of the defendant Richards to promissory notes, then the action of the said Williams in signing the note copied in the complaint was ineffectual to bind Richards and he would not be liable for the pay-

ment thereof, unless you should further find from a preponderance of the evidence that, after being fully informed of all the facts in the premises, he ratified the action of Williams in signing his name to the said note.

Refused. [237]

And the Court having refused to give to the jury the said special instructions numbered 2, 3, and 4, as requested by said answering defendant Richards, the said answering defendant in the presence of, and before the retirement of, the jury, excepted to the said refusal of the Court, in manner following: [238]

[Caption and Title.]

**Exceptions to the Refusal to Give and Modification
of Special Instructions Tendered by the
Defendant Edwin Richards.**

The answering defendant Edwin Richards excepts to the action of the Court in refusing to give special instructions tendered by him and modifying others asked by him at the last trial of this action which occurred on March 24th, 25th, 26th, 1914, said special instructions being on file with the papers in this cause, to wit:

I.

The said defendant excepts to the refusal of the Court to give and read to the jury his special instruction #1 as to the effect of the notice to the bank through Williams of Richards' disaffirmance and dissatisfaction with Williams' action in signing his name to the note made the subject of this lawsuit. [239]

II.

The answering defendant excepts to the action of the Court in modifying his exception #2 in this, that the Court did read to the jury the opening paragraph thereof which is an abstract statement of the law in reference to what constitutes mining copartnership and the powers and authorities of individual members thereof, but did not read to the jury and omitted the balance of the said instruction which is an application of said abstract law to the testimony.

III.

The answering defendant excepts to the action of the Court in relation to his special instruction #3 in this, that the Court did read to the jury the opening paragraph thereof which is a mere abstract statement in regard to the declaration of one person that another is his partner or principal, but omitted to read and withheld from the jury the balance of the said instruction which applies the said abstract principle of law to the evidence in the case.

IV.

The answering defendant excepts to the action of the Court in refusing his instruction #4 on the subject of the authority to sign a promissory note by one who assumes to act as an "attorney in fact" and the duty that that casts upon the one taking that paper to inquire into such authority, there being nothing similar thereto or covering the same ground in the general charge.

V.

The answering defendant excepts to the refusal of the Court to give his special instruction #5 on the

subject of a release of the answering defendant by the bank, the same being within the proofs of the case and nothing of like nature having been given in the general charge. [240]

VI.

The answering defendant excepts to the action of the Court in refusing to give his special instruction #6 on the subject of mining copartnerships and the implied authority of members in the matter of executing partnership obligations, nothing of like import having been given by the Court in its general charge.

The foregoing exceptions were taken by the answering defendant Edwin Richards in open court in the presence of the jury after the general charge of the Court had been read to the jury on the 26th day of March, 1914.

F. E. FULLER,
District Judge. [241]

[Caption and Title.]

Motion for New Trial.

The answering defendant Edwin Richards moves the Court for an order setting aside the verdict of the jury in this case, and granting him a new trial, for the following reasons:

First: For errors of law occurring at the trial, and excepted to by him at the time.

(a) In excluding from evidence the letters of Edward Williams to himself, the mining contract between John Boulton, Edward Williams, Angus McKenzie and Angus McLennan of date February 25, 1911, and this answering defend-

ant's letter of January 2, 1912, addressed to the plaintiff bank, which are marked respectively Defendant's Exhibits 3, 4, 5 and 6 for identification;

(b) In misdirecting the jury as to the law of the case, as particularly pointed out in the written exceptions thereto filed in the case, which said exceptions are made a part of this motion;

(c) In failing and refusing to give and read to the jury special instructions tendered by the answering defendant, as the same are now on file with the papers in the case and numbered from 1 to 6, inclusive.

Second: For the reason that said verdict is contrary to law. [242]

Third: Because said verdict is not sustained by sufficient evidence, and is contrary to the evidence.

LOUIS K. PRATT & SON, and
T. A. MARQUAM,

Attorneys for Answering Defendant Edwin Richards. [243]

[Caption and Title.]

Certificate to Bill of Exceptions.

United States of America,
Territory of Alaska,—ss.

I hereby certify that the above and foregoing contains a full, true and accurate transcript of all the oral testimony and documentary evidence introduced at the trial of the above-entitled action upon the issues joined as between the plaintiff and the answering defendant Edwin Richards, as well as the com-

plete oral charge of the Court to the jury; that it includes all exceptions taken throughout the trial to the admission and rejection of evidence, also the exceptions taken to the instructions of the Court to the jury, the exceptions to the refusal of the Court to give the special instructions tendered by the said answering defendant and numbered 2, 3 and 4, the motion for a new trial, and all other matters and things occurring thereat and not otherwise of record.

And I now sign, seal and allow the same as and for a true and correct bill of exceptions of all matters contained therein, and order the same to be refiled by the clerk of this court, and, when so refiled, to be and become part of the record in this cause.

Dated at Fairbanks, Alaska, this 27th day of May, A. D. 1914.

F. E. FULLER,

District Judge.

Entered in Court Journal No. 12, page 933. [244]

Service of the foregoing proposed Bill of Exceptions and receipt of copy thereof acknowledged this 11th day of May, 1914, 8:30 P. M.

McGOWAN & CLARK.

No. 1815. District Court, Fourth Judicial Division, Territory of Alaska. American Bank of Alaska, a Corporation, vs. Edward Williams and Edwin Richards, Mining Copartners Engaged in Business Under the Firm Name and Style of Richards & Williams, and Richards & Williams, a mining Copartnership. Bill of Exceptions. Received Clerk of the Court Office, May 12, 1914. Fairbanks, Alaska. Refiled in the District Court, Territory of

Alaska, 4th Div. May 27, 1914. Angus McBride,
Clerk. [245]

[**Minutes of Court, May 27, 1914.**]

[Caption and Title.]

Order Settling and Allowing Bill of Exceptions.

Now on this day, the Bill of Exceptions herein being presented in open court by Louis K. Pratt, attorney for defendants, Thos. A. McGowan appearing in behalf of plaintiff; and upon due consideration thereof,

IT IS ORDERED that said Bill of Exceptions be, and the same is hereby settled and allowed. [246]

[Caption and Title.]

Assignment of Errors.

The above-named Edwin Richards, answering defendant in the said cause and plaintiff in error, will rely for the reversal of the judgment herein by the United States Circuit Court of Appeals for the Ninth Circuit, on the following errors committed by the trial Court as shown by the record:

I.

For the error of the trial Court in instructing the jury orally, on its own motion in the following language:

“On the part of the plaintiff it is contended that in the latter part of September, 1910, in the Hot Springs Precinct in this division, the defendants Williams and Richards entered into an agreement of partnership whereby Richards

agreed to advance a certain amount of money for the use of such partnership, and the defendant Williams agreed to proceed to the Iditarod and to investigate conditions there and that it was also agreed between them that if it should seem advisable to said Williams, after arriving in Iditarod and after such investigation, that he should purchase an interest in a certain lay or lease upon a mining claim on Flat Creek. It is further contended by the plaintiff that Williams did proceed to Iditarod, pursuant to such agreement, and did purchase for said partnership an interest in a lay or lease on Flat Creek, and, for the purpose of making such purchase, did borrow the sum of thirty-five hundred dollars from plaintiff, and, on or about October 6, 1910, made and delivered to plaintiff a promissory note therefor, signed by Williams in the name of Williams & Richards.

Plaintiff further contends that Richards was informed [247] by Williams of this transaction, and that he ratified the same, and that thereafter on or about the 24th day of February, 1911, the defendant Williams executed to the plaintiff the note which has been introduced in evidence, bearing date on that day, and that the same was given for the money theretofore loaned, and in renewal of the note made on or about October 6, 1910, and that this note was executed as the note of Williams & Richards, and that Williams was authorized to execute such note on behalf of the defendant Richards." for the reason that the same is inaccurate, and no

such claim was made or advanced by the plaintiff; that no amount of money was mentioned as between the answering defendant and Edward Williams other than the twenty-five thousand dollars advanced by Richards to Williams at Hot Springs, and there was nothing said between them about borrowing more money at Iditarod City for any purpose from any bank or anybody else, as indicated by said opening statement. And the same is further misleading, for the reason that it confuses the note of October 6, 1910, with the one of February 24, 1911, upon which this action is based.

II.

For the error of the Court in instructing the jury orally, on its own motion, in the following language:

“You should consider, therefore, whether or not the defendants Williams and Richards entered into any partnership agreement as alleged by the plaintiff, and whether or not, if you find that they did enter into such agreement, it was contemplated thereby that the said Williams should have authority to borrow money for the purposes of such partnership, and whether or not the monies borrowed by him from the plaintiff were for such purposes, if you find that a partnership had been formed theretofore between Williams and Richards.”

for the reason that the same is misleading in that it refers to a general copartnership between Williams and Richards instead of a mining copartnership as set forth in the plaintiff's complaint; and for the further reason that it is not based upon any evidence in the case, and especially that part of it that author-

izes the jury to inquire whether any agreement between them contemplated the borrowing of money for partnership purposes, and whether or not monies borrowed from the plaintiff were used for such purposes. [248]

III.

For the error of the Court in instructing the jury orally, on its own motion, in the following language:

“You are instructed that if you find from the evidence in this action that such partnership was formed with the defendants, and that it was contemplated thereby that Williams should have authority to borrow money for the partnership use, and that such sum of money was borrowed from the plaintiff by Williams for such partnership purposes, and the notes above mentioned given to plaintiff therefor, then your verdict should be for the plaintiff.”

for the reason that the same is misleading, and not based on any issue tendered by the complaint or any evidence introduced upon the trial.

IV.

For error of the Court in instructing the jury orally, on its own motion, as follows:

“In case you should find that such copartnership was not formed between the defendants, or that Williams was not authorized to borrow money for partnership purposes, or that the money loaned by the plaintiff was not for partnership purposes, then you should consider whether or not the defendant Richards was informed of the transactions between Williams and the plaintiff, and whether or not the defend-

ant Richards, after having been fully informed of such transactions, ratified the same.

You are instructed that if you find that the defendant Richards was fully informed of the transactions between the plaintiff and Williams, and that said sum of money was loaned by the plaintiff to Williams for the use of Williams & Richards, and that on or about October 6, 1910, the defendant Williams executed the note to the plaintiff for said sum of money and signed thereto the name of Richards, or the firm name of Williams & Richards, and that Richards, having been fully informed of these transactions, ratified the same, that then such ratification of the acts of Williams by Richards would have the same effect as if authority to perform such acts had previously been given by Richards to Williams. And, if you find that said acts of Williams were so ratified by Richards, then your verdict should be for the plaintiff, provided you also find that the note in issue was given as a renewal of the note of October 6, 1910, and in consideration of the loan originally made."

for the reason that the same is misleading, is not based upon any issues made by the pleadings in the case, is not applicable to any [249] theory of the case made by the pleadings, and is not based upon any evidence introduced or heard at the trial.

V.

For error of the Court in instructing the jury orally, on its own motion, as follows:

"You are instructed that if you find from the evidence in this case that, subsequent to the time

when Williams borrowed from the plaintiff herein the monies for the recovery of which this action was brought, he communicated fully such facts to the defendant Richards, and informed him that the said monies so borrowed in the name of Richards & Williams were to be used in their joint enterprise, and that said Richards did not, on receipt of such information within a reasonable time notify the plaintiff in this action that he was not a partner of defendant Williams, or repudiate the acts of Williams, that such failure to so notify the plaintiff may be considered by you as evidence of ratification of the acts of Williams by Richards."

for the reason that the Court here singled out a vein of evidence and told the jury that they may consider the same as an act of ratification, casting a duty upon Richards to notify the bank of his repudiation of Williams' actions in signing his name to the paper, whereas in law it was not his duty to notify the bank, but the bank's duty to notify him of Williams' act in signing his name to the note in suit, and thus give him the opportunity to affirm or disaffirm the conduct of Williams.

VI.

For error of the Court in instructing the jury orally, on its own motion, in the following language:

"You are instructed that it was not necessary for Williams to have authority to bind Richards in the giving of the note sued on in this action before the execution of the same, provided you

find that Richards thereafter ratified the acts of Williams.

And you are further instructed that such ratification need not be expressed in writing. But his failure to disaffirm the acts of Williams within a reasonable time, or to repudiate the actions of Williams and notify the plaintiff thereof in this action within a reasonable time, may be held to constitute a ratification of the acts of defendant Williams so that the defendant Richards will then become liable for such indebtedness. Of course, an act of ratification, [250] either by failure to protest, or by express affirmative acts, implies that the party had full knowledge of such acts as had been done by his agent; and, unless he had such knowledge, he would not be held to have ratified them by any failure to act or disaffirm them. Ratification means a confirmation of an act previously done by another." for the reason that the Court here instructs the jury upon a theory of the case not developed by the pleadings or made by the issues in the case, and singles out a vein of supposed evidence and declares the force and effect that the jury should give thereto, and instructs them with reference to something that was not disclosed by any evidence in the case.

VII.

For error of the Court in instructing the jury orally, on its own motion, in the following language:

"You are instructed that no authority in writing is necessary to authorize another to sign his name to a note, provided the authority is

given in some way, or provided the acts of the party so signing another's name to the note are ratified by that other afterwards with full knowledge of what has been done. And in this case if the note was signed in the name of Richards & Williams with the intention on the part of Williams to bind both parties, and he either had such authority from Richards beforehand, or if Richards, with full knowledge of what had been done, ratified such act afterwards either by affirming the same or by failure to notify the payee of the note that the same was signed without his authority, within a reasonable time, then he may be held to have been bound in the same manner as if such authority had been given in writing beforehand."

for the reason that the same is not within any of the issues made by the pleadings, is upon an entire different theory from the one tendered by the plaintiff in its complaint, is not based upon any evidence introduced by either party, and is misleading.

VIII.

For the error of the Court in refusing to give the special instruction requested by the answering defendant Richards and numbered 2, which is in the following language :

"The Court instructs the jury that a mining partnership can only exist where several parties co-operate in working [251] mining property ; mere ownership as tenants in common, either of the mining ground itself or a leasehold thereon, not being sufficient.

Where a mining copartnership is shown to exist within the definition above given, each partner has power to bind his copartners by dealing on credit and the giving of promissory notes for the purpose of working the mine, where it appears to be necessary or usual in the management of the business; but one mining copartner has no implied power or authority to borrow money and sign the firm name to a promissory note as evidence of such loan, where the money is to be and is used in purchasing mining ground or interests therein or assignments of leases thereon, and if he does so without the knowledge or consent of his copartners they are not liable thereon.

Applying the law as given above to the testimony in this case, I charge you that if you find from the testimony that no mining copartnership existed between the defendants Edward Williams and Edwin Richards on the 24th day of February, 1911, the date of the note which is the subject of this action; or if you find that they were on and before said day such copartners but that the money evidenced by the said promissory note was, on or before that date and without the knowledge or consent of the defendant Edwin Richards, borrowed by the defendant Edward Williams from the plaintiff bank, for the purpose of being used in the purchase of an interest in a lease on Flat Creek in the Iditarod country and that said money was so used, then in either event the defendant Edwin

Richards is not liable upon the said note; unless afterwards, with full knowledge of all the material facts connected therewith, he ratified the making and signing of the said note by the said Edward Williams. The word "ratification" means a confirmation of a previous act done by another."

for the reason that while the Court did read to the jury the opening paragraph of the said special instruction Number 2, it omitted the balance of said instruction which is an application of the abstract law in said opening paragraph to the testimony in the case.

IX.

For the error of the Court in refusing to give the special instruction requested by the answering defendant Richards and numbered 3, which is as follows:

"The Court instructs the jury that the naked declaration or representation of one person that another person is his mining partner or that he is that other's agent with authority to sign promissory notes by reason of such copartnership, is not evidence of a mining partnership or agency, as against such other person.

Applying the foregoing rule of law to the testimony [252] in the case, if you find therefrom that on or about the 6th day of October, 1910, at Iditarod City and at the time the note of that date for \$3,500.00 was signed by the defendant Edward Williams in the name of 'Richards & Williams' as shown by Plaintiff's Exhibit

'5,' the said Williams declared and represented to C. J. Hurley, manager of the plaintiff bank, that he and the defendant Edwin Richards were mining copartners, and for that reason he was authorized to borrow money and sign the firm name 'Richards & Williams' to a promissory note for the amount of money so borrowed, then I charge you that under such circumstances the said Hurley, acting for said bank, had no legal right to rely solely on such declaration or representation and if he did so it was at the peril and risk of the plaintiff bank. Under the conditions stated above it would have been the duty of the officers of the bank to make other and independent inquiries as to the truth of the statements made by Williams, and if you find from the evidence that the said officers failed to make such inquiries and that Williams was not at the time a mining copartner with Richards and was not authorized to sign the note, the bank must bear the loss, if any, and not the defendant Edwin Richards.

The Court further instructs the jury that all that is said above with reference to the note, Plaintiff's Exhibit '5,' applies with equal force to the note, Plaintiff's Exhibit '6,' made the basis of this action and copied in the body of the complaint, so far as the liability of the defendant Edwin Richards is concerned, growing out of the signature thereon 'Richards & Williams.'

The note in action (Plaintiff's Exhibit '6') is also signed by individual names as follows: 'Ed-

ward Williams, Edwin Richards by Edward Williams, his attorney in fact.' With reference to such signatures, you are instructed that as the name of defendant Edwin Richards purports on the face of the note in action to have been signed by Edward Williams under the authority of a power of attorney, but the evidence conclusively shows that he had no power of attorney or other written authority to sign said note for defendant Richards, it follows that the plaintiff cannot recover against said Richards by reason of such individual signatures unless you should further find from a preponderance of the evidence that the defendant Edwin Richards, after full knowledge of all the material facts connected with the signing of the said note, ratified the action of the said Edward Williams in the execution and delivery thereof."

for the reason that, while the Court did read the opening paragraph of said special instruction numbered 3, he withheld from the jury the remaining part of the instruction which applied the abstract principle of law stated in the opening paragraph, to the evidence in the case. [253]

X.

For the error of the Court in refusing to give the special instruction requested by the answering defendant Richards and numbered 4, which is as follows:

"Where a promissory note is signed by one person for another as that other's Attorney in Fact, as the note copied in the complaint was,

the one taking such note is put on his guard by the form of the signature and is bound to inquire whether the person so assuming to sign for such other in fact held a power of attorney or other written authority to so act, and if it turn out that he did not have such written authority the note is void as against such other.

Applying the foregoing rule of law to the testimony in this case, if you find from the evidence that the defendant Williams on February 24, 1911, did not have a power of attorney or other written authority from the defendant Richards authorizing him to sign the name of the defendant Richards to promissory notes, then the action of the said Williams in signing the note copied in the complaint was ineffectual to bind Richards and he would not be liable for the payment thereof; unless you should further find from a preponderance of the evidence that, after being fully informed of all the facts in the premises, he ratified the action of Williams in signing his name to the said note."

which said error consisted in failing to give the said special instruction number 4, and also stating nothing covering the same ground in the general oral charge of the Court.

XI.

The Court erred in sustaining the objection of plaintiff to the three letters of the defendant Edward Williams to defendant Edwin Richards, which said letters tended to contradict the oral testimony, and oral and documentary evidence of the said Williams

when on the witness-stand, and were proper cross-examination of the said Williams as a witness, which said letters were marked Defendant's Exhibits 3, 4 and 5, for identification, respectively.

XII.

The Court erred in sustaining the objection of the plaintiff to defendant's offer of a letter from defendant Edwin Richards [254] to the plaintiff Bank, which was marked Defendant's Exhibit No. 6, for identification, and is in the words and figures as follows:

“WINCHESTER ANNEX.

Third Street.

San Francisco, Cal. Jan. 2/12.

American Bank of Alaska,

Fairbanks,

Mr. Bruning,

Dear Sir: I have just received pass book and a note concerning a note from Iditarod for \$3500.00 and overdraft for a sum \$327.00 which had evidently been long on the way, but will comply with an answer at once, as it is a surprise to me, I am sure you are aware I have not signed that note, neither was Williams or any one else authorized to do any business of that nature in my name, as for the overdraft, also I had nothing whatever to do with their operations at Iditarod. I stand ready at any and all times to settle my accounts, as my record up in Alaska will show, and if any further information in this matter is required, my address at present is above, but I expect to be in Fairbanks about end of

March this year, when I will call on you on my way back to Hot Springs.

Respectfully yours,

(Signed) EDWIN RICHARDS."

for the reason that the said letter was a repudiation of the actions of the defendant Williams in signing the name of said Richards to the note in suit, and was written promptly after the first notification that the said Richards received of the action of the said Williams in so doing, and the exclusion of said letter was particularly damaging to the answering defendant Richards for the reason that the Court instructed the jury that if said Richards failed to repudiate the action of Williams promptly after notice, that he, Richards, was liable.

XIII.

The Court erred in denying the motion of the answering defendant Richards for a new trial, on the grounds stated therein.

XIV.

The court erred in receiving the verdict of the jury and rendering a judgment thereon, and especially in rendering a [255] judgment against the answering defendant Richards as a member of a supposed firm of Richards & Williams, and against said Edwin Richards as an individual, for the sum of \$3,500.00, and an attorney's fee of \$750.00, and all the costs of the action to be taxed by the Clerk.

LOUIS K. PRATT & SON and

THOMAS A. MARQUAM,

Attorneys for Edwin Richards, Answering Defendant Below, and Plaintiff in Error in the Appellate Court.

Rec'd a copy of the foregoing assignment of errors
Apr., 1914.

McGOWAN & CLARK,

Attys. for Plff. Bk.

[Endorsements.] [256]

[Caption and Title.]

Petition for Writ of Error.

To the Honorable Judges of the United States Circuit Court of Appeals, Ninth Judicial Circuit:

Comes now the above-named Edwin Richards, answering defendant below and plaintiff in error in the Appellate Court, and complains that in the record and proceedings had in the said cause, and also in the rendition of the judgment in the above-entitled cause, in the said District Court, at the November, 1913, Term thereof, against the said answering defendant and plaintiff in error, on the 20th day of April, 1914, manifest error hath happened, to the great damage to the said Edwin Richards, answering defendant and plaintiff in error:

Wherefore said plaintiff in error prays the judge of this court for the allowance of a Writ of Error, for an order fixing the amount of bond to cover costs in the said cause upon the said review, for an order fixing San Francisco, in the State of California, as the place of such review, and for such other orders and process as may cause the same to be corrected by the [257] said United States Circuit Court of Appeals for the Ninth Judicial Circuit.

Dated this 20th day of April, 1914.

LOUIS K. PRATT & SON and

THOMAS A. MARQUAM,

Attorneys for Edwin Richards, Answering Defendant Below, and Plaintiff in Error.

Allowed—F. E. FULLER,

Judge.

Received copy Apr. 20, 1914.

McGOWAN & CLARK,

Attorneys for Plaintiff Below and Defendant in Error.

[Endorsements.] [258]

[Caption and Title.]

Order Allowing Writ of Error and Fixing Amount of Bond.

The answering defendant Edwin Richards, plaintiff in error, having this day filed his petition for Writ of Error from the decision and judgment as against him thereon made and entered herein, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, together with an Assignment of Errors within due time, and also praying that an order be made fixing the amount of security which the said answering defendant and plaintiff in error should give and furnish to cover the costs upon said Writ of Error, and also designating the place where such review should be heard, and said petition having been this day duly allowed:

NOW, THEREFORE, IT IS ORDERED that said Writ of Error be granted and the place of the said

review shall be San Francisco, in the State of California, and that the said answering defendant and plaintiff in error shall file in this court a bond in the sum of (\$500.00) five hundred dollars, to be approved by the Judge of this court, to the effect that if the said answering defendant and plaintiff in error shall prosecute the said Writ of Error to effect, and answering all costs if he fail to make good his plea, then the said obligation to [259] be void; else to remain in full force and virtue.

Dated this 21st day of April, 1914.

F. E. FULLER,
District Judge.

Received a copy this 21st day of April, 1914.

McGOWAN & CLARK,
Attorneys for Plaintiff, and Defendant in Error.

Entered in Court Journal No. 12, page 911.

[Endorsements.] [260]

[Caption and Title.]

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, that we, Edwin Richards, answering defendant and plaintiff in error, as principal, and Robert Jones and L. A. Hanson as sureties, are held firmly bound unto the plaintiff and defendant in error the American Bank of Alaska, a corporation, in the sum of (500) Five Hundred dollars, to be paid to said plaintiff below and defendant in error, its successors or assigns, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and

severally, and our and each of our representatives and assigns, firmly by these presents.

Sealed with our seals and dated this 27 day of April, 1914.

Whereas, the above-named Edwin Richards, answering defendant and plaintiff in error, has sued out a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled cause by the District Court of the Territory of Alaska, Fourth Judicial Division.

Now, therefore, the condition of this obligation is such that if the above-named Edwin Richards, answering defendant below and plaintiff in error, shall prosecute said Writ of Error to effect and answer all costs, if he shall fail to make good his plea, then this obligation shall be void; otherwise to be and [261] remain in full force and effect.

EDWIN RICHARDS,
Principal.
ROBERT JONES,
L. A. HANSON,
Sureties.

United States of America,
Territory of Alaska,—ss.

Robert Jones and L. A. Hanson, sureties on the foregoing bond, each for himself, and not one for the other, on oath say: I am a resident of Tofty in the Territory of Alaska, and am not an attorney or counsellor at law, marshal or deputy marshal, clerk, or other officer of any court, and am worth the sum set

opposite my name, to wit:

Robert Jones.....\$1000.00

L. A. Hanson..... 500.00

over and above all my just debts, liabilities and exemptions.

ROBERT JONES.

L. A. HANSON.

Subscribed and sworn to before me this 27 day of April, 1914.

[Seal]

L. P. SNYDER,

A Notary Public for Alaska.

My commission will expire ———.

O. K.—McGOWAN & CLARK,

per John A. Clark.

The foregoing Bond is approved by me the 2d day of May, 1914.

F. E. FULLER,

Judge.

Copy Recd. 4/21/14. No blanks filled.

McGOWAN & CLARK.

[Endorsements.] [262]

Writ of Error.

UNITED STATES OF AMERICA.—ss.

The President of the United States, to the Honorable, the Judge of the District Court for the Territory of Alaska and District of Alaska, Fourth Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea *which in* said District Court before you between Edwin Richards, plaintiff in error, and American Bank of Alaska, a corporation, defendant in error, a manifest error

hath happened to the great damage of the said plaintiff in error, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the 1st day of June, Nineteen Hundred and Fourteen, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, the 2 day of May, Nineteen Hundred and Fourteen.

[Seal]

ANGUS McBRIDE,
Clerk of the U. S. District Court for the Territory of
Alaska, Fourth Division. [263]

The foregoing Writ is hereby allowed.

F. E. FULLER,
Judge.

Service of the foregoing Writ of Error and receipt of copy thereof is hereby admitted this 2d day of May, 1914.

McGOWAN & CLARK,
Attorneys for Defendant in Error. [264]

[Endorsed]: No. 1815. In the United States Court of Appeals for the Ninth Circuit. Edwin Richards, Plaintiff in Error, vs. American Bank of Alaska, Defendant in Error. Writ of Error. Filed in the District Court, Territory of Alaska, 4th Div. May 2, 1914. Angus McBride, Clerk. By _____, Deputy. [265]

Citation on Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to American Bank of Alaska, a Corporation, or to McGowan & Clark, Its Attorneys:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the Clerk's office of the District Court for the Territory and District of Alaska, of the Fourth Division thereof, wherein Edwin Richards is the plaintiff in error, and American Bank of Alaska, a corporation, is the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the plaintiff in error in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 2d day of May, 1914, and of the Independence of the United States the one hun-

dred and thirty-eighth.

F. E. FULLER,
District Court Judge Presiding in the District Court
for the Territory and District of Alaska, Fourth
Division.

Attest: ANGUS McBRIDE,
Clerk of the District Court for the Territory and
District of Alaska, 4th Division.

Service of the above Citation by the receipt of a
copy thereof is hereby admitted this 2d day of May,
1914.

[Seal] McGOWAN and CLARK,
Attorneys for Defendant in Error. [266]

[Endorsed]: No. 1815. In the United States Cir-
cuit Court of Appeals for the Ninth Circuit. Edwin
Richards, Plaintiff in Error, vs. American Bank of
Alaska, Defendant in Error. Citation on Writ of
Error. Filed in the District Court, Territory of
Alaska, 4th Div. May 2, 1914. Angus McBride,
Clerk. By —————, Deputy. [267]

[Order Enlarging Return Day of Writ of Error.]

[Caption and Title.]

On application of the said plaintiff in error, by
reason of the great distance between Fairbanks,
Alaska, and San Francisco, California, and the delays
and uncertainties of the transmission of mail matter
between the said points,

IT IS ORDERED that the return day of the writ
of error allowed in this cause as the first day of June,
A. D. 1914, be enlarged to the first day of August,
A. D. 1914.

Dated at Fairbanks, Alaska, this 2d day of May, 1914.

F. E. FULLER,
Judge.

Entered in Court Journal No. 12, page 919.

Service admitted this 2d day of May, 1914.

McGOWAN & CLARK,
Attys. for Plaintiff. [268]

[Endorsed]: No. —. In the United States Circuit Court of Appeals for the Ninth Circuit. Edwin Richards, Plaintiff in Error, vs. American Bank of Alaska, Defendant in Error. Order Extending Time to File Transcript. Filed in the District Court, Territory of Alaska, 4th Div. May 2, 1914. Angus McBride, Clerk. By ———, Deputy. [269]

[Certificate of Clerk U. S. District Court to
Transcript of Record].

[Caption and Title.]

United States of America,
Territory of Alaska,
Fourth Division,—ss.

I, Angus McBride, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of two hundred and seventy-one pages, numbered from 1 to 271, inclusive, constitutes a full, true and correct transcript of the record on writ of error in cause No. 1815, entitled American Bank of Alaska, Plaintiff, vs. Edward Williams and Edwin Richards, Mining Copartners Engaged in Business Under the Firm Name and

Style of Richards & Williams, and Richards & Williams, a Mining Copartnership, Defendants, wherein Edward Williams and Edwin Richards, mining copartners engaged in business under the firm name and style of Richards & Williams, and Richards & Williams, a mining copartnership, are plaintiffs in error, and American Bank of Alaska are defendants in error, and was made pursuant to and in accordance with the praecipe of the plaintiff in error filed in this action and made a part of this transcript, and by virtue of the citation issued in said cause and is the return thereof in accordance therewith.

And I do further certify that the original Writ of Error, Citation on Writ of Error, Order Enlarging Return Day, and Stipulation as to Printing Record are included in said transcript, and that the Index thereof, consisting of pages i to ii, is a [270] correct index of said transcript of record; also that the costs of preparing said transcript and this certificate, amounting to ninety-eight and 40/100 dollars (\$98.40), have been paid to me by counsel for plaintiffs in error in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, this ninth day of June, 1914.

[Seal]

ANGUS McBRIDE,

Clerk District Court, Territory of Alaska, Fourth Division. [271]

[Endorsed]: No. 2440. United States Circuit Court of Appeals for the Ninth Circuit. Edwin Richards, Plaintiff in Error, vs. American Bank of Alaska, a Corporation, Defendant in Error. Tran-

script of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Fourth Division.

Received and filed June 30, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.